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STATUTE OF LIMITATIONS FOR CERTAIN CLAIMS BY THE UNITED STATES ON BEHALF OF INDIANS

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2222

TO EXTEND THE TIME FOR COMMENCING ACTIONS ON BEHALF OF AN INDIAN TRIBE, BAND, OR GROUP, OR ON BEHALF OF AN INDIVIDUAL INDIAN WHOSE LAND IS HELD IN TRUST OR RESTRICTED STATUS

FEBRUARY 27, 1980

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STATUTE OF LIMITATIONS FOR CERTAIN CLAIMS BY THE UNITED STATES ON BEHALF OF INDIANS

WEDNESDAY, FEBRUARY 27, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:50 p.m., in room 2226 of the Rayburn House Office Building; Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Mazzoli, Hughes, Glickman, Moorhead, McClory, Kindness.

Staff present: William P. Shattuck, counsel; James H. Lauer, Jr., assistant counsel; Deborah Owen, associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 1:30 having arrived, and two members being present, this subcommittee will come to order.

We will take up the bill S. 2222, relating to the extension of time for commencing actions on behalf of Indian tribes, bands and groups, or on behalf of an individual Indian whose land is held in trust or restricted status.

I have observed that all witnesses who intended to appear are present. I state for the record that we have notified Members of Congress who in the past have expressed an immediate interest in this legislation. They have been given an opportunity to appear. Some have submitted statements. Others have thanked us and waived the opportunity.

So, insofar as I know, no one has been cut off.

Our first witness will be a representative of the Department of Interior, Mr. Rick C. Lavis, Acting Assistant Secretary for Indian Affairs.

Would you come forward, please. And while you are becoming comfortable, I will state for your information and that of any others who intend to testify that we request that you state the points that you are urging, without any unnecessary embellishment.

You certainly may state any cogent, concise, persuasive arguments in support of your points, but it is urgent that we move rapidly on this, not only because of the urgency of the bill itself, but we have another high priority item standing right behind it.

So, believe me, my colleagues on this committee are able to absorb your good points of argument quickly.

Mr. Lavis, we have your letter. You have a statement in the form of a letter, correct?

Mr. LAVIS. Yes, sir. I also have a statement for the record, Mr. Chairman.

Mr. DANIELSON. You have an additional item. Well, we will receive both of them in the record, unless there is some objection. I hear none. So ordered.

So now if you will state your points, what you are for, what you are against, and cogently, we will proceed.

TESTIMONY OF RICK C. LAVIS, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS; ACCOMPANIED BY HANS WALKER, ACTING ASSOCIATE SOLICITOR FOR INDIAN AFFAIRS, AND GEORGE BOURGEOIS, SOLICITOR

Mr. LAVIS. Mr. Chairman, I appreciate that very much.

Before I begin, I would just like to, for the record, indicate that I have Mr. Hans Walker, the Acting Associate Solicitor for Indian Affairs with me, to my right; and to my left, Mr. George Bourgeois, an attorney on Mr. Walker's staff. They will be available to answer any questions you might have.

Mr. DANIELSON. There won't be very many questions, but you may proceed.

Mr. LAVIS. Thank you, Mr. Chairman.

Let me be very brief, then. You have my statement to enter into the record. Let me just briefly state that the position of the administration is to seek approval for an extension of the statute of limitations for Indian claims for an additional 2 years.

When we testified on this issue before the Senate at that time there was some question as to the administration's position. As you know, the Senate-passed bill calls for 4¾ years. The administration believes that 2 years additional time would be adequate for us to prosecute these claims.

Let me just also make the point, Mr. Chairman, and Congressman Moorhead, that when this legislation was enacted 2 years ago, to give us the additional time——

Mr. DANIELSON. That was in 1977. Three years ago.

Mr. LAVIS. Yes; we thought at that time it would give us adequate time. We were anticipating or estimating roughly 1,000, maybe more or so, claims in existence at the time. But in gearing up this process and acquiring the manpower and resources, both within the Department and through our regular appropriations process, we have discovered and uncovered far greater a number of claims than we had anticipated.

Those claims now are roughly about 9,000, I am advised. And to provide that backup material sufficient for litigation to the Justice Department is going to require considerably more time than the time we have left under the current statute.

So, Mr. Chairman, I think that basically covers my points. I don't want to belabor the committee further than that. You have my statement.

Mr. DANIELSON. Thank you.

[The complete statement follows:]

PREPARED STATEMENT OF RICK LAVIS, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS, ACCOMPANIED BY HANS WALKER, JR., ACTING ASSOCIATE SOLICITOR FOR INDIAN AFFAIRS, BOTH OF THE DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you to discuss S. 2222 which would extend the statute of limitations 4 and ¾ years for certain claims by the United States on behalf of Indians. I would like, in my testimony today, to describe the scope of the claims problem, current status of the program, our recent efforts, and what is left to be done. I would also like to suggest an amendment to S. 2222 limiting the extension of the statute of limitations to two years.

I will not burden you with a detailed background of the statute of limitations claims program. That history has been stated in the various reports relating to previous extensions. It will be helpful, however, to mention briefly certain background points that may place the situation that we face today in proper perspective.

The need for the program began developing after July 18, 1966, the date the statute of limitations first went into effect. The statute at that time limited to six years the time in which the United States, in carrying out its trust responsibility to Indians, could sue third parties for damages to the property of Indians arising out of tort or contract. In 1972 the six-year limitation was extended five more years, or until July 18, 1977, as to claims which accrued before July 18, 1966, the date of the first act.

In 1977, in testimony before this Committee on the then pending extension bill, we stated that we had identified several hundred pre-1966 claims, and that we anticipated well over a thousand nationwide. We based this conservative estimate on the best available knowledge we had at that time. We were given a two-year-and-8-month extension, until April 1, 1980.

Prior to the end of fiscal year 1977, we had gone as far as we could within existing resources. During that time, the Department formulated a comprehensive claims processing plan and had aggressively sought funds to implement the plan. Immediately after the 1977 extension was granted, work began implementing the claims processing plan as best we could along with preparation of a supplementary budget request. By February 1978 the plan was operating minimally within existing resources. An intensive training phase took place at the field level. The training included direction on claims processing procedures, claims analysis, time limits, communication channels, use of recommended forms, reporting systems, suggested publicity to aid in identifying claims, and liaison with the Justice Department. While we did process some of our backlog during this time we encountered many new claims. It became clear that many more claims existed in the field than we originally thought were there and that we needed funding to mount an intensive effort if we were to meet the needs of the claims problem once and for all.

Specific funding to implement our statute of limitations claims program was first provided for fiscal year 1979. Just as we were launching a stepped up program at the beginning of fiscal year 1979, we were slowed for six months by a hiring freeze. When the thaw came in March we were left with about a year to process a then existing inventory of about a thousand claims. Our plans called for an all-out search for unidentified claims that we realized were out there. Our plan also required that all worthwhile claims be referred to the Department of Justice for litigation no later than November 30, 1979. (The reason for the November date was that the Department of Justice needed at least 4 months to prepare and file the claims in court).

The all-out search for unidentified claims, mentioned above, was conducted in the summer of 1979. By the end of the summer we had uncovered a large number of additional potential claims, over 4,500. The potential claims continued to arrive, and by December 1, 1979, our count of identified potential claims reached a grand total of 9,768. The latest count, January 10, 1980 has run this total to over 10,000 potential claims. Our search experience also leads us to believe that another 5,000 or more identifiable but not yet inventoried claims exist in the field. We cannot possibly get all of our identified claims evaluated and processed, or the unidentified claims identified, much less processed, by April 1, 1980, now just a little over 30 days away.

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We do believe, however, that we can identify all of the remaining claims involved by April 1, 1981. We would then expect to refer the worthwhile claims among these to the Department of Justice by mid or late 1981. The Secretary is committed to a policy calling for completing the program at the earliest possible time and at the least cost.

The large number of identified claims that were delayed in process this past fall resulted in an extension of our Justice Department referral date to December 28, 1979, a move which we agree may have caused serious inconvenience to the Justice Department. Since the first of the year we have continued sending claims to Justice. To date we have sent Justice about 300 litigation requests covering over 4,000 claims. We doubt if it is possible for Justice to get these into court by April 1, 1980, and we certainly haven't had enough time to make meaningful attempts to negotiate amicable settlements.

On the other hand, we have rejected an equal number of claims, about 4000, as worthless or not worth litigation. We have successfully resolved amicably almost 600 claims to the benefit of the Indian claimants. That leaves us about 2000 identified claims pending at various levels in the claims process. Few of these backlog claims have a chance of making it to court by April 1, 1980 or to settlement. Included in this number, incidentally, are some of the largest and most difficult claims we have, including some that with further investigation and evaluation may prove to be worthless.

Our claims program has affected, and without question will continue to affect, a significant number of our citizens in this country. In many instances hardships may result because of our suits. In many of these same instances we are dealing with regaining title to property under circumstances in which defendants through no conscious fault of their own are holding by void title. The title issues in these claims are not subject to the statute of limitations as are the tort issues, but we must sue for title to get damages. We would hope to have sufficient time to evaluate the damage aspects of these very serious title claims extremely carefully before filing suit. We do not have, and have not had, sufficient time to do this.

Many prospective defendants are individuals, among whom are many Indians. Some defendants are states, counties, or other public bodies. In other instances defendants include corporate entities. Other prospective defendants are immune from suit, such as Indian tribes and the Federal Government. In any case, under the time constraints we face, we are unable to give the vulnerable defendants time to work out amicable settlements, or to give the delicate professional valuation to these claims that they deserve.

With regard to the so-called eastern land claims, nearly all of them, like many of the smaller land title cases in the west, remain to be resolved. These land claims also have tort damage aspects subject to the statute of limitations. This Committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We are committed to negotiated settlements with regard to them, and have been attempting to achieve negotiated settlements in a number of them. It is not likely, however, that any will be settled before the April 1 deadline, with the possible exception of the Cayuga claim in New York. And we anticipate that a number of the eastern tribes will file large title-clouding lawsuits before April 1 if the statute of limitations is not extended.

Thus, we are confronted with a physical impossibility in completing the statute of limitations program before April 1, 1980. For this reason we currently believe an extension of the statute of limitations is necessary. We believe we can complete the entire program with 2 years and would recommend that S. 2222 be amended to provide for a term no longer than that. This is of course less than half the time called for by the bill but we believe that if we can maintain our present momentum we can got the job done within that time.

In closing, I would like to address two aspects of S. 2222. The first concern relates to Section 2 of the bill which was inserted by amendment on the Senate floor. That section would restrict the 4 and ¾ year extension to claims identified on or before December 31, 1981, and published in the Federal Register. We object to that provision, for some very practical reasons. First, it will likely generate litigation because of technicalities such as differences between the published notices and the facts, parties and causes of action eventually sued on. Arguments will be made that the action brought is not the claim noticed in the Federal Register. Secondly, this section also literally requires that all claims not filed by to April 1, 1980 must appear in the Register even though they are

filed in court before December 31, 1981. That apparently was not the intent; the intent being to publish only those claims which are carried beyond the December 31, 1981 date. Finally, we simply do not believe that such a provision is needed. We therefore recommend that you amend the bill to provide a simple two-year extension.

This completes my statement and my associates and I will be pleased to respond to questions.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 27, 1980.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2222 in the House, an act "To extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status."

We suggest herein an amendment to S. 2222 in the nature of a substitute and recommend that S. 2222 as so amended be enacted.

S. 2222 would amend the statute of limitations provisions in section 2415 of title 28, United States Code, to extend until December 31, 1984, the time within which the United States may bring damage actions on behalf of Indians whose lands are held in trust or restricted status. The extension would apply only with respect to claims identified by the Secretary of the Interior, on or before December 31, 1981, as potential Indian claims and published in the Federal Register.

Under existing law, the United States has until April 1, 1980, to bring damage actions on such claims which arose before July 18, 1966, the date the statute was originally enacted. The April 1980 date was set by Congress in the Act of August 15, 1977 (91 Stat. 842). Although we have made intense efforts to identify and file all such claims by the April 1980 deadline, unforeseen circumstances have arisen which will prevent us from completing our task by that date.

We experienced an enormous increase in the number of identified potential claims over the last six months of calendar year 1979, from about 1,200 claims in June to about 9,800 by year's end. We also developed information indicating that at least another 5,000 as yet unidentified potential claims still exist.

The Bureau of Indian Affairs (BIA), the primary agency responsible for the claims program, has with the assistance of our Solicitor nevertheless made great progress in disposing of the enormous backlog of identified claims. We had, by December 28, 1979, referred over 3,500 claims, in about 180 litigation reports, to the Department of Justice for suit; rejected as worthless over 4,100 claims; resolved 575 claims by collection, compromise, or administrative or court action; and advanced the remaining balance of claims, about 1,900, as far in the claims process as our resource could carry them.

Thus, while we recommend that the statute of limitations with respect to these claims be extended, we believe that we can complete our responsibilities within a shorter period than that provided for in S. 2222. We therefore recommend that the statute of limitations be extended for a period of two years, until April 1, 1982.

We believe that we can identify all of the remaining claims involved which we estimate at approximately 5,000, by April 1, 1981. We would then expect to refer most of these claims to the Department of Justice by mid or late 1981.

We would expect to refer most of the 1,900 claims referred to above to the Department of Justice no later than late spring or early summer of 1981. With respect to a number of claims, we lack only certain particulars without which suit cannot be filed, such as abstracts of title, maps of survey, technical data, or evidentiary studies. We would expect to obtain such particulars by no later than the close of the current year, although studies needed for fishery damage claims in the Northwest and for certain water rights cases in the Southwest may take somewhat longer to complete.

In order to provide the Department of Justice with sufficient time within which it may request and obtain from us additional information necessary to enable them to file suit on claims we refer to that Department for filing, we would expect to complete our work with respect to all claims by September 30, 1981. The final

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six months before the deadline we recommend would thus be reserved to the Department of Justice to complete the processing and filing of the claims.

We also anticipate intense negotiation with respect to a number of claims, including the eastern land claims. Extension of the April 1, 1980, deadline would prevent the filing of massive lawsuits seeking title to, and possible ejectment of present occupants from, vast areas claimed by the tribes involved, and would avoid our possible liability for breach of our fiduciary responsibilities to the Indians involved. We believe, in view of the serious nature of this situation, that we must negotiate fair and honorable compromises for presentation to the Congress and that, in the absence of such compromises, we must be prepared to recommend appropriate legislative solutions.

We do not believe that any extension of the statute of limitations should be limited to cases identified by the Secretary and published in the Federal Register, as would be provided by section 2 of S. 2222. As stated above, we believe that we can identify all of the remaining claims within the first year of the extension. However, we believe that any provision requiring the identification and publication of claims would cause practical problems and give rise to additional litigation. For example, the filing of claims which, under a simple extension, could otherwise be filed on April 2 of this year would have to be delayed until they had first been published in the Federal Register. Questions with respect to issues from minor inaccuracies in land descriptions to the propriety of including additional parties in a suit could give to substantial additional litigation that would impede the prompt resolution of the claims.

In view, therefore, of our trust responsibility to the Indians on whose behalf the claims involved may be brought, and the potential liability of the United States if we fail to meet that responsibility, we recommend that the statute of limitations be extended. However, in view of our belief that we can identify and file the claims yet remaining before April 1, 1982, and our belief that a requirement for identification and publication of claims would interfere with the completion of that process, we recommend that S. 2222 be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

That (a) the third proviso in section 2415(a) of title 28, United States Code, is amended by striking out "after April 1, 1980" and inserting in lieu thereof "after April 1, 1982".

(b) The proviso in section 2415(b) of title 28, United States Code, is amended by striking out "on or before April 1, 1980" and inserting in lieu thereof "on or before April 1, 1982".

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

RICK C. LAVIS,
Acting Assistant Secretary.

Mr. DANIELSON. You set forth the data rather well in your letter.

Mr. Moorhead, any questions?

Mr. MOORHEAD. I have a couple of questions. You have testified that you want the Congress to extend the deadline for 2 years only. Are you certain that you will be able to get the job done within that period, or, will you be back here in 2 years requesting another extension?

Perhaps it would be better to set a deadline that would give you a chance to get the job done, and, thus, avoid these repeated requests of Congress to pass extensions.

Mr. LAVIS. Yes, sir, I think we can do it in 2 years. I think we have a far better appreciation for the 2 years than what we had anticipated the last time we were here in 1977. We just didn't understand the magnitude of it until we finally went out in the field and began to uncover these claims.

Mr. MOORHEAD. To what do you attribute the large increase in claims over your earlier estimates?

Mr. LAVIS. Well, I think a couple of things, sir. I will ask my associates to comment on that, as they have been a little closer to it than I, but my understanding has been simply that in finally going out into the field and getting into our records, which are sometimes not that good, and also making a conscious effort to discover existing claims is what finally brought us to the number of claims we are dealing with now.

Hans, do you want to add anything, or George?

Mr. BOURGEOIS. No. The only thing I would want to add would be that in the prior years we were unable to receive very many claims, because very few showed up.

However, in the last year, we went actively examining the records to attempt to locate possible claims, rather than rely on the publicity type of approach as we had done in prior years. We had to do our own search, as it were.

Mr. MOORHEAD. Would you please comment on the Bellmon amendment, which would impose a schedule on the Department of Interior for identifying potential claims?

Mr. WALKER. Yes; I am going to emphasize our objection to that amendment. I understand the intent is that it would require identification and publication in the Federal Register of those cases which would be carried over beyond December 31, 1981. But the literal language of that provision would require every single case which is filed after April 1 this year to be identified and published in the Federal Register, because it applies to all—it extends the statute only with respect to those cases that are identified and published.

Mr. MOORHEAD. Isn't one of the purposes of publication in the Federal Register to give notice to those who might have a claim, but whose names are not included, that they should do something about it?

Mr. WALKER. Well, I am not certain what the purpose the Senator had in mind is, but one of them, I suppose is that the department would not continually come up with new claims after that date; that there be some finality to what we come up with. But the problem is not that with us, but with respect to the technicality which would require us literally to identify and publish every single claim, even those we intend to file before 1981.

Mr. MOORHEAD. All right. My last question is this: You have testified that you need this extension because you have not had sufficient time to process pending claims. Are claims still coming in?

Mr. WALKER. Yes; there are some claims coming in.

Mr. MOORHEAD. What is your view on imposing a cutoff date on new claims so that there will be an eventual end to this process?

Mr. WALKER. Well, our position is that within 2 years we would process all the claims that we have, and that it's just slightly longer beyond the 1980——

Mr. MOORHEAD. What if more are coming in?

Mr. WALKER. Well, we don't anticipate that there will be.

Mr. MOORHEAD. Is that merely a guess on your part?

Mr. WALKER. Yes.

Mr. MOORHEAD. If additional claims come in, will you want to extend the time?

Mr. WALKER. Well, we intend to initiate a process where we will have canvassed all of the agencies and the tribes and all the sources where cases might be available, and have those reported to the Department of Justice by that time.

Mr. MOORHEAD. Thank you very much.

Mr. DANIELSON. You mentioned that over 3,500 claims have been referred to Justice. Over what period of time have the 3,500 claims been referred to Justice?

Mr. BOURGEOIS. I can respond to that. That includes all of the claims referred since 1976. Up to August of this year we had referred roughly like 49 cases or claims to the Department of Justice. We finally got this thing off the ground this past year. We began to refer more cases.

Now in connection with these numbers, I'd like to say that we are up over 4,000 claims to Justice now, which does not show in our statement. As we sit here, work is going on.

Mr. DANIELSON. Yes; but this letter is dated February 27, and you have certainly done a lot this afternoon, if you have moved it up 3,500 to 4,000. [Laughter.]

Mr. BOURGEOIS. But I think that data is dated in the letter. It says "as of" something.

Mr. DANIELSON. Well, I won't argue the point.

Mr. BOURGEOIS. But in any case, let me explain a little bit, too, that that includes around 300 or maybe 310 litigation reports, which would probably be that number of lawsuits, if Justice sued on them all, because we are suing, say, a single defendant for quite a few claims.

Mr. DANIELSON. Well, I've done that. You have 19.4 claims in each lawsuit.

Mr. BOURGEOIS. Roughly it would run like that.

Mr. DANIELSON. So if you still got around 2,500 claims that you have pending, plus another 2,000, to 4,500 aggregate, you have got about 231 more lawsuits to file.

Mr. BOURGEOIS. Possibly. But a number of those will be rejected, sir.

Mr. DANIELSON. Well, you say you had only 40 claims turned over by last August, or July?

Mr. BOURGEOIS. In the summer some time.

Mr. DANIELSON. You've done 4,300 and some since then?

Mr. BOURGEOIS. That's right.

Mr. DANIELSON. Apparently as the torch of the statute of limitations comes close, there is an acceleration. Maybe we should keep it real close.

Mr. LAVIS. Let me speak to that, Mr. Chairman. I don't want to encourage you to think that way. [Laughter.]

For the very simple reason that the Justice Department needs about 4 months in which to do their part of this job and the large part of the work obviously is with the Department of Interior, but they asked us to give them 4 months.

Now, as we sit here, we have got 30 days left, roughly, and in some of those cases we just don't have enough time.

Mr. DANIELSON. I got your point and I understand it. And I won't badger you any longer. I only implore you to please work like time

is running out, because it is running out, and we don't want to cause a catastrophe in the field of litigation.

We don't want to compel people to hire counsel to protect their interests in a matter which might simply resolve itself, if it can be thoroughly investigated. But please get it over with.

If there are five or six things that people complain of in government after taxes, et cetera, you get down to never getting anything done, and I won't put that at the top of the pile, but it's certainly among the favored several.

So please move faster on it, and I know you've got a lot to do, but we shouldn't keep the door open to these lawsuits forever and ever and ever. Some time people are going to equate you with being as bad as the Internal Revenue Service, and I know you don't want that.

Mr. MOORHEAD. There is one other problem. The property owner whose title is in jeopardy lives with a lump of lead hanging over his head. It upsets his life when these things never come to an end. When the statute of limitations is extended, you keep people in misery for years and years.

Mr. DANIELSON. They wouldn't want to do that, would they?

Mr. MOORHEAD. They are doing it.

Mr. DANIELSON. Thank you very much, gentlemen.

Mr. LAVIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Our next witness is a panel from the Native American Rights Fund. Suzan Harjo, legislative liaison. Come forward, Ms. Harjo. You and I have become old friends.

From the National Congress of American Indians, Governor Robert Lewis, Governor of the Pueblo of Zuni; and National Tribal Chairmen's Association, Ken Black, executive director.

Oh, we've got a fourth today. Will you identify him for the record. Who is your fourth colleague here?

Governor LEWIS. Mr. Chairman, over to my far right is Mr. Ron Andrade, who is the executive director for the National Congress of American Indians; Ms. Harjo to my right; Mr. Ken Black is an executive director for the National Tribal Chairmen's Association; Mr. R. Anthony Rogers, who is the attorney for the National Congress of American Indians.

Mr. DANIELSON. Thank you very much. We wanted those names in the record.

Now here is what we have agreed on, and stop me if I am wrong, but I hope you don't stop me.

You recognize the urgency of the bill and that we put it in the pipeline ahead of some other things. The issues are very simple. The question is: Are we going to extend the time, or are we not going to extend the time, and if we extend it, how far? That's the only issue. And you, ma'am, and you gentlemen, you have all agreed that Governor Lewis is going to be the spokesman for the group.

So, Governor Lewis, proceed; and your statement will be received in the record in its entirety unless there is objection. I would really like to hear you ad lib, if you would.

Governor LEWIS. Thank you very much.

TESTIMONY OF HON. ROBERT LEWIS, GOVERNOR OF THE PUEBLO OF ZUNI; SUZAN HARJO, LEGISLATIVE LIAISON, NATIVE AMERICAN RIGHTS FUND; KEN BLACK, EXECUTIVE DIRECTOR, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION; RON ANDRADE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, AND R. ANTHONY ROGERS, ATTORNEY, NATIONAL CONGRESS OF AMERICAN INDIANS

Governor LEWIS. While we have submitted our joint statement for the record, we would like to bring out the highlights. We have cut it down quite extensively, but we would like to go over the main points that we would like for you to know about.

We support the Senate bill 2222 to extend this time for all claims, discovered or undiscovered, at least until December 31, 1984. We support the bill as reported by the Senate Select Committee on Indian Affairs on February 7, 1980, rather than as amended and passed by the Senate on February 20, 1980, and we will return to this point in a few moments.

Prior to 1979, the Department of the Interior failed to undertake any sustained attempt to identify and process potential claims. The Federal Government in general, and the Interior Department in particular, maintains the land records, survey maps, contracts, and other information needed to bring these actions.

Lack of access to this data severely limits the ability of Indian people to conduct their own research and bring actions without Federal assistance.

The Federal Government is also responsible for gathering certain information which is prerequisite to the proper evaluation of these claims: Accurate maps and surveys, allotment histories, land-use inventories, easement accountings, water needs assessments, and so forth.

In great part, this basic information does not exist. In many instances, the Federal records contain incomplete and contradictory data.

In recommending a previous extension, this committee reported that the Bureau of Indian Affairs and the Solicitor's Office—

> Have not been able to perform the necessary work to identify all of those wrongs and then develop factual information necessary to get litigation filed* * *. This inability to prosecute the present claims of Indians will work a hardship on tribes all over the country and may result in a considerable loss to Indians through no fault of their own, losses which Indians can ill afford because of their low position on the economic scale * * *.

Failure to extend the deadline could force the filing of thousands of broad protective suits, many of which could be settled without litigation, given adequate time to commence and conclude negotiations.

If such protective suits were not filed, potentially meritorious claims would be time-barred.

Moreover, it is feared that, in its rush to meet the statutory deadline, the Interior and Justice Departments may have rejected many actionable claims, leaving Indian people with no time to appeal decisions and challenge research conducted in haste.

It should be further noted that failure of the United States to bring timely suit on behalf of Indian people would probably subject the United States to suits by Indians for breach of fiduciary duty.

These suits would involve extensive and costly litigation with a substantial risk of liability for money damages to the United States.

Federal agencies, not the Indian people, have the papers, records, and accounts concerning the Indian property they manage as trustee. Until the United States makes an inventory of the historical uses of Indian property it manages and administers as trustee to ascertain unlawful encroachments, the Indian people will not know what claims may exist.

We believe the management to S. 2222, adopted by the Senate, with its two-tiered statute of limitations, would not permit sufficient time to identify and publish all potential claims. Less than 2 years to identify all the claims that are now unknown is simply not sufficient time.

Moreover, we believe that Indian claims should be barred only after they have been identified and the Indians have been notified of the claims that might be filed.

We appreciate the opportunity to present this statement.

[The complete statement follows:]

JOINT STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION AND NATIVE AMERICAN RIGHTS FUND

We appear before this Committee to testify in support of S. 2222, a bill to extend the statute of limitations period for the filing of money damages claims by the United States on behalf of Indian tribes and individuals against third parties.

We support enactment of S. 2222 to extend this time for all such claims, discovered or undiscovered, at least until December 31, 1984. We support the bill as reported by the Senate Select Committee on Indian Affairs on February 7, 1980, rather than as amended and passed by the Senate on February 20, 1980, and will return to this point in a few moments.

In 1966, Congress enacted 28 U.S.C. § 2415, which for the first time established a six-year statute of limitations for contract and tort claims for money damages brought by the United States. The 1966 Act did not expressly mention Indian claims. In 1972, however, Congress extended until 1977 the statute of limitations deadline applicable to claims for money damages brought by the United States on behalf of Indians. In 1977, the statute of limitations deadline was extended to April 1, 1980. Without a further amendment of 28 U.S.C. § 2415, the statute of limitations will bar actions more than six years old brought by the United States on behalf of Indians for money damages.

Prior to 1979, the Department of the Interior failed to undertake any sustained attempt to identify and process potential claims. The federal government in general, and the Interior Department in particular, maintains the land records, survey maps, contracts, and other information needed to bring these actions. Lack of access to this data severely limits the ability of Indian people to conduct their own research and bring actions without federal assistance. The federal government is also responsible for gathering certain information which is prerequisite to the proper evaluation of these claims: accurate maps and surveys, allotment histories, land-use inventories, easement accountings, water-needs assessments, and so forth. In great part, this basic information does not exist. In many instances, the federal records contain incomplete and contradictory data.

In recommending a previous extension, this Committee reported that the Bureau of Indian Affairs and the Solicitor's Office "have not been able to perform the necessary work to identify all of those wrongs and then develop factual information necessary to get litigation filed * * *. *This inability to prosecute the present claims of Indians will work a hardship on tribes all over the country and may result in a considerable loss to Indians through no fault of their own, losses which Indians can ill afford because of their low position on the economic scale* * * *." [Italic added].

Testimony of officials of the Interior Department in December 1979 before the Senate Select Committee on Indian Affairs on S. 2222 indicated that the BIA

has been able to process, evaluate or settle little more than a quarter of the several thousand potential claims now known. Failure to extend the deadline could force the filing of thousands of broad, protective suits, many of which could be settled without litigation, given adequate time to commence and conclude negotiations. If such protective suits were not filed, potentially meritorious claims would be time-barred. Moreover, it is feared that in its rush to meet the statutory deadline, the Interior and Justice Departments may have rejected many actionable claims leaving Indian people with no time to appeal decisions and challenge research conducted in haste.

It should further be noted that failure of the United States to bring timely suit on behalf of Indian people would probably subject the United States to suit by Indians for breach of fiduciary duty. These suits would involve extensive and costly litigation with a substantial risk of liability for money damages to the United States.

As reported to the Senate by the Select Committee on Indian Affairs, S. 2222 would have extended the statute of limitations deadline from April 1, 1980, to December 31, 1984. During debate on the floor, however, the Senate agreed to an amendment which requires the Secretary of the Interior to identify all potential Indian claims by December 31, 1981, and to publish notice of these potential claims in the Federal Register. Only potential claims so identified would be entitled to the extension of the statute of limitations period to December 31, 1984.

Mr. Chairman, this very situation continues. Unless Congress acts in the next month to extend the statute of limitations, Indians will be penalized for the failure of the United States, the trustee, to investigate and identify the claims they have. This would be grossly unfair. Before a statute of limitations bars Indian claims, Indians should be notified by their trustee of all potential claims they may have against third parties. Federal agencies, not the Indian people, have the papers, records and accounts concerning the Indian property they manage as trustee. Until the United States makes an inventory of the historical uses of Indian property it manages and administers as trustee to ascertain unlawful encroachments, the Indian people will not know what claims may exist.

The dereliction of duty in this respect by the United States was graphically called to the attention of the Senate by Senator Cranston, who described the situation in California. While the BIA and government lawyers in that state had identified only ten possible claim to be filed, legal services attorneys for California Indians investigated BIA files and identified over 700 possible claims in a two month period, and advised that there was a great need for further investigation. Their report, which appears in the Congressional Record at pages S1641–1642 for February 20, illustrates dramatically the unfairness of making Indians lose valid claims because of the failure of their trustee, the United States, to devote sufficient personnel and resources to investigating those claims.

We believe the amendment to S. 2222 adopted by the Senate, with its two-tiered statute of limitations, would not permit sufficient time to identify and publish all potential claims. Less than two years to identify all the claims that are now unknown is simply not sufficient time. Moreover, we believe that Indian claims should be barred only after they have been identified and the Indians have been notified of the claims that might be filed. The amendment would unfairly reverse the process, and bar any unknown claims not identified by December, 1981. Finally, much unnecessary litigation could ensue in order to determine whether the Secretary of the Interior had in fact published sufficient notice of a claim by December 31, 1981.

For example, how specific must be the language in the Federal Register to withstand challenge by a defendant that there was insufficient description and notice of the pending claim. Thus, we oppose the amendment to S. 2222, as adopted by the Senate, in favor of the original bill, as reported by the Senate Select Committee.

We appreciate the opportunity to present this testimony.

Mr. DANIELSON. Governor Lewis, as usual, you got right to the point, and you did it quickly. I thank you for it.

Mr. Moorhead of California?

Mr. MOORHEAD. On page 3 of your statement, you suggest that the United States might be subject to a suit by the Indians for breach of fiduciary duty for failing to bring timely suit on behalf of the Indians.

Could you elaborate on the legal basis of such liability?

Governor LEWIS. I will yield to Mr. Rogers.

Mr. ROGERS. Mr. Moorhead, the simple basis is, as we attempted to point out in the statement, that the United States has all the records for most of these claims. I know in my own case representing the Arapahoe tribe in Wyoming, in the three or four trespass claims that have been uncovered there in the last couple of years, that it's only been possible because of the fact that the Bureau of Indian Affairs there has been prompted to search through the records to find them.

So there is a responsibility upon the Government, because they have the records, and it's their failure to do that that we believe would subject them to fiduciary breach lawsuits.

Mr. MOORHEAD. Even if there is no negligence shown?

Mr. ROGERS. I believe so, Mr. Moorhead, because the Government is the trustee, and I think it is in fact negligence when the Government has not carried out its duties since 1966, when the statute was first enacted. I think that itself is the ground of negligence, that they have not come forward and done their duty.

Mr. MOORHEAD. What about the doctrine of sovereign immunity?

Mr. ROGERS. Well, we have a case at this time, Mr. Moorhead, pending in the Supreme Court of the United States, which will answer that question definitely. But we assert that there is jurisdiction in the Court of Claims for such suits against the United States.

Mr. MOORHEAD. One thing that bothers me is your statement that there was no substantial effort to identify and process potential claims until 1979. Why do you believe that this extension would encourage the Department of the Interior to engage in a substantial effort?

Mr. ROGERS. Mr. Moorhead, others may have some additional thoughts here, but the only thing we can do upon getting this extension is to continue to push as we have in the past for the administration to support the claims by sufficient appropriations to do the job. But we won't even have the opportunity to do that without the extension.

Mr. MOORHEAD. It seems to me extension of the deadline for 4 years rather than 2 would encourage further delay until the next deadline approaches.

Mr. ROGERS. The fact is, it is just an enormous job, and I don't believe for 1 minute that the unknown claims number is a simple 40 or 200. I think there are many of them out there, and it's going to take a full-scale job. The motivation of human psychology in having too much time to do something has also got to be balanced against the fact that it's such a big job to do that sufficient time must be provided.

Mr. MOORHEAD. Do the Indian people have access to the Federal records to which you referred through the Freedom of Information Act?

Mr. ROGERS. They no doubt, in almost every instance, could obtain some of the records from the BIA. It's a question of expertise to the uninitiated, as many of these people are, to be thrown into the file room of the Agency or the area office or wherever, to try to uncover claims. It's a bit difficult.

Second, they may not be able to get that information in all cases, because we have the twin principle operating here of protection of trust information, which is an issue involved in the Freedom of In-

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formation Act, that some Indian trust information is not subject to the act. So certain individuals might not be able to get it at all.

Mr. MOORHEAD. You do not support the Bellmon amendment. Do you think it would be advisable for the Department of Interior to list the claims that they have at least 90 days before the December 31, 1981, deadline provided in the Bellmon amendment so people that might have a claim through their counsel or otherwise can see whether they are on the list? If they are not, they could take steps to get on the list.

Mr. ROGERS. Well, as a matter of pure information, I don't guess I would have any particular problem with it, but as the measure of whether the claim is allowed or not, I don't think that's fair, because in the rush the description that appears of that claim in the Federal Register may simply be inadequate to serve as required notice to defeat the statutory bar.

Mr. MOORHEAD. How long is it really going to take to identify all these claims? If we pass this legislation, are you going to request another extension?

Mr. ROGERS. The extension to 1984 is really a second position for us. We think there ought to be a clear formative duty placed upon the United States to go out and start identifying these claims now. And I can't guarantee that they are going to find them all in that period of time.

Mr. BLACK. May I address that for a moment, sir?

I come from a tribe that has won a claim against the United States. This tribe signed a treaty in 1883 to cede half of Nebraska and a good portion of Iowa to the United States, in return for the opportunity to move to Oklahoma, where good Senator Bellmon is from.

We did not settle this case until 1954. All the records and all the information was kept in Washington. When I was a young man, my people told me that there was money set aside for us, that the United States would pay us $1 an acre for 9 million acres in 1883, and that the United States would pay 50 cents, and the settler who moved in would pay 50 cents to us for that land that we left. We left the State of Nebraska, we moved to Oklahoma.

The United States kept their part of the bargain. We never saw the other 50 cents from these settlers who moved in. So we sued the Government. We claimed that you are the cosigner to all these settlers. When we hired our lawyer, he was a young man of 28. When you, the Government, finally settled with us, he was nearly 62 years old, and had spent $35,000 of his own money that he had.

Mr. MOORHEAD. It was almost a lifetime job.

Mr. BLACK. No; we are talking about limitations of when are we going to—we are given a certain length of time to do these things, and yet a lot of these tribes, they haven't been paid for over 50 to 100 years, and Senator Bellmon comes from a State that has over 100,000 Indians in it, and I see here he is not acting in the best interests of his people. And let me assure you that's why he is serving now in a lameduck session. He will not be elected, if he runs for the town council.

Mr. DANIELSON. The time of the gentleman has expired.

Thanks, Carlos.

Mr. Mazzoli?

Mr. MAZZOLI. Thank you, Mr. Chairman.

I guess I have no specific question, except that I have been in Congress for 10 years now, and it looks like every time we turn around, there is some other effort to extend a law or to grant leeway or provide certain flexibility, and I think really that this just compacts and impacts on how we get our work done up here.

And I just wonder again, Governor, if you could give us just a few words of why you think if you were sitting in our spot and you had granted one extension, then another extension, that we can be assured that yet another extension will provide all the time needed. We reached 1980 and looking in terms of 1984, would you give me then just a few brief words of why if you were sitting in our spot you could go back to your constituency and argue in favor of a documents bill?

Governor LEWIS. Well, sir, I believe that in the first instance, when the trespass law was passed, we get into land dealings, we all do not realize the procedures and the amount of work that is entailed in shaping things up to where they could be resolved, for one thing.

I think even the original amount of years that was given to this particular matter were not sufficient, and we are bringing out four main points, in regard to why we are again requesting the extension, and I would like to emphasize in the areas that we would like for you gentlemen to know.

Indian tribes, for one thing, do not have their own records. Very often the records kept by the Bureau of Indian Affairs are housed in Federal records centers and the National Archives in Washington, D.C., and in the Federal Register Depository in Maryland.

The other point is a great deal of technical expertise is needed to examine the records for actual transfer. That technical help is limited. The availability of technical assistance to the American Indian tribes who are often remote from the centers of research has placed these tribes at a disadvantage.

The third point is that research is expensive, to pursue the details of the trespass requires expensive legal research, or less expensive research by historians to document such trespass.

Tribal budgets should be allowed more time to produce these evidences. After the research is done, legal consultation, which is full time and consuming and expensive, is required.

In the State of New Mexico, there are 609 cases up to January of this year, and 50 to 60—50 are being processed. Five have gone actually to court. We do not know how many more valid claims there are. It can go up to 700 or more.

For instance, my tribe, we may have some valid claims as a tribe or individual members of my tribe. But right now we are just now getting into the research part of seeing if we do have any rightful claims, and I do not think this is unique with the Zuni tribe. Other tribes are in the same position.

But where tribes do not have any natural resources to fall back on for financial use in this type of matter, it is very hard for them to accomplish anything in the right time.

Mr. MAZZOLI. Thank you very much.

Ms. HARJO. I'd just like to respond, to make two points. We cannot hold the feet of the trustee and the administration to the fire without the help of the Congress. The Congress has not in the past exercised

its oversight responsibility in regard to these claims, and what I would suggest is periodic reporting by the administration to this subcommittee, or some committee that you would give the responsibility to, to see that this job is being done.

Mr. DANIELSON. Would the lady yield for just a moment?

You are absolutely right. I have already made a note to request counsel to set this for oversight next January, and we are going to send a letter to both BIA and Justice, telling them now that we are going to call them in for oversight in January, and maybe they will get a little action into the proceeding. But you are absolutely right, Ms. Harjo.

Ms. HARJO. And I think if we all work together, if Indians are forthcoming with information that we can provide and the administration is forthcoming with the expertise that it can provide and the Congress asks for periodic reports, we may get this job done.

I think to answer your earlier question, we will be back here again, saying it hasn't been done, without that kind of cooperative effort.

Mr. MAZZOLI. And you think with that cooperative effort, we could do this all by 1984?

Ms. HARJO. I couldn't predict whether we could or not, but I think we have a chance at getting a job done which we all want to get done before that time.

Mr. MAZZOLI. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. McClory?

Mr McCLORY. Thank you, Mr. Chairman.

I think there is probably no ethnic or racial group that we regard with more sympathy, compassion, and understanding than the Native American Indians who are the original citizens of this land.

The thing that concerns me is when do we finally resolve the land and other claims asserted by the Native Americans?

I would lean toward extending the deadline. However, I think we should try to finally resolve this problem, because it is unfortunate to have differences lingering between the immigrants and the Native Americans. When can we do this? When should the period end for litigating these claims?

Ms. HARJO. We will have, sir, border-town clashes, either physically, as happens now, or psychologically, as happens now, until such time as we resolve some of these tangible resource claims, so that we remove the threat to non-Indians that any minute they are going to be sued or going to somehow have something taken away from them that they feel is theirs. And as long as Indian people know that we are entitled to some certain lands and until such time as we can have a resolution on the courts speak to those problems, we will continue to have bad feelings that will continue until we bring these to the fore, and we want to bring these to the fore as well as anyone.

I think it would benefit the entire region.

Mr. McCLORY. Our attention has been primarily directed toward Maine and some of the other New England States. I happen to be from the State of Illinois where the Potawatammies, a rather nomadic tribe, wandered about the land.

Are you aware of any claims being investigated in connection with the State of Illinois particularly with respect to the Potawatammies and the Blackhawks?

Ms. HARJO. None that we know of, sir.

Mr. DANIELSON. Are these all money claims? Are there some claims relating to resources and others relating to land?

Ms. HARJO. These are only money claims.

Mr. MCCLORY. What, if anything, is being offered by the Indian tribes with regard to the extensive reservation lands, many of which were considered as rather worthless at one stage, but which now have been found to possess extremely valuable underground mineral resources? Are the tribes, in asserting their money claims for the lands taken away from them, also doing equity by returning the lands which were set aside for the reservation?

Ms. HARJO. I think, sir, this isn't a matter of trade, money for land. Certain land claims cases are affected by this statute, because a major portion of the cases would be in trespass damages. In order to establish that you are entitled to trespass damages, you would need to have, or establish title to the land.

Mr. MCCLORY. Is the intention to retain the reservation and to make the money claim as well?

Ms. HARJO. Yes.

Mr. MCCLORY. I have no further questions Mr. Chairman. I yield back the balance of my time.

Mr. DANIELSON. Thank you.

Mr. Hughes of New Jersey?

Mr. HUGHES. Thank you, Mr. Chairman. I don't have any questions.

Mr. MCCLORY. Would the gentleman yield? Could I ask one additional question?

What percent of Indian blood is necessary to be an Indian qualified to make a claim?

Governor LEWIS. Entitled to? Nearly all tribes that are federally recognized, they established their enrollment of their particular tribes with one-fourth degree.

Mr. MCCLORY. Thank you.

Mr. HUGHES. Mr. Chairman, I have no questions. I think the committee has established a record here.

Mr. DANIELSON. Thank you.

Mr. Kindness, of Ohio?

Mr. KINDNESS. Thank you, Mr. Chairman. I have no questions.

Mr. DANIELSON. Mr. Glickman?

Mr. GLICKMAN. I have no questions.

Mr. DANIELSON. Thank you.

I have only one. I am going to ask counsel, and I will implore him to make this short. Some of us were not on this committee when we considered earlier extensions of the statute. Could you give a hypothetical but concise example of the type of claims we are talking about?

Mr. ROGERS. They are varied, Mr. Chairman, but one example that has been raised in a large number of cases is so-called "forced fee" claims, where individual Indians who have had trust patents issued to them by the United States, have found those lands sold to third parties by the United States, without the consent of the individual landowner.

There are a number of these that are pointed out for the record in the Senate report. There is a large variety of trespass claims that

really don't go—I am addressing myself briefly to Mr. McClory's question—that don't really go to a transfer of land.

In other words, are we looking for this land beyond the reservation and still want to keep the reservation? That's not really the case. These are cases normally within the confines of the reservation, and there has been trespass.

An example is the Wind River Reservation in Wyoming. The county, which is the primary county within the boundaries of the reservation, has been found to have been using tribal gravel pits without paying for it, for a number of years now. They have actually built roads across some Indian trust lands.

So this is not the kind of situation in so many of these instances where you have the inflammatory situation in Maine.

Mr. DANIELSON. That's sufficient. There may be some members here who have not been involved.

Thank you, ladies and gentlemen, for your help, and without objection, Governor Lewis' statement, which is a joint statement, is received in the record.

Our next witness is——

Mr. MCCLORY. Mr. Chairman, do we have the names of all these witnesses?

Mr. DANIELSON. Counsel, will you be sure that we have got them all correct, please.

The next witness is a representative of Tricounty Landowners Association of Rock Hill, S.C., represented by Guy Johnston, president.

Mr. Johnston, come forward. You have supplied us with a written statement which, without objection, will be received in the record in its entirety. It is received, and you are free, sir, to present your case.

TESTIMONY OF GUY JOHNSTON, PRESIDENT, TRICOUNTY LANDOWNERS ASSOCIATION, ROCK HILL, S.C.

Mr. JOHNSTON. Thank you, Mr. Chairman.

I was interested in the comment by Mr. Lewis that the average claims per case is 19.4.

Mr. DANIELSON. That was my comment, but that's all right.

Mr. JOHNSTON. Our particular claim or case, as the case may be, involves a land claim and trespass damages involving 42,000 freeholders in a 144,000-acre area. I think that makes us the largest land claim in the Nation as far as the number of people involved in the area.

Mr. DANIELSON. You might try the case involving three-fourths of the State of Maine. That's a pretty good one, too.

Mr. JOHNSTON. In acreage, yes, sir, that's much larger than ours.

The lump of land over one's head is certainly large when you are talking about 42,000 defendants in a case.

I would like to point out that you don't necessarily have to file a claim to cause damage in a particular area. Mr. Leo Krulitz requested the litigation at the Justice Department in 1977 in the York and Lancaster Counties of South Carolina. Since that time, there has been severe economic damage in the area of industrial development. Industries are simply staying away from the area. Commercial development slowed. Farm and timberlands are difficult to transfer, and we have

even lost disaster aid funds to which people were entitled, because they couldn't show clear title.

We have attempted to resolve the claim through legislation and through settlement negotiations. All the parties in our claim have acted under the assumption that the statute of limitations would in fact expire, and I think, unfortunately, there was no progress made in our case until the deadline became near.

Then State study commissions were formed, local hearings were held. Some progress was made. It is my belief that if a 4-year extension is granted, then we will see 3½ or 4 years of inactivity, and 3½ more years of economic damage, which we have already been subjected to.

Mr. DANIELSON. Would the gentleman yield?

I know whereof you speak, and you are justified in having that opinion. I can only give you one commitment by myself, and that is that we will hold an oversight hearing in January, which is less than a year off, and have the Bureau of Indian Affairs, plus the Department of Justice, account to us as to what progress they are making.

In other words, we will use a blowtorch, if possible, to move them along a little bit. That may help, assuming that we do pass this law.

Mr. JOHNSTON. I hear from the Chair that it sounds like it is going to be extended.

Mr. DANIELSON. I would say that's a good guess, but proceed.

Mr. JOHNSTON. If I could, I'd like to give three very short quotes from the Congressional Record, August 3, 1977, by Mr. Cohen.

> I think it ought to be very clear that this House has indicated on the record that this is the final extension, and that we are sending a message to the Department of the Interior and to the Justice Department that they had better get busy * * *
>
> Mr. DANIELSON. I thank the gentleman for his contribution. He has stated the facts very eloquently * * *
>
> Mr. ASHBROOK. I just want to make certain that I heard what the gentleman from Maine said. I believe he used the word "final," f-i-n-a-l.

Mr. DANIELSON. You probably even heard the words that I said.

Mr. JOHNSTON. Yes, sir.

Mr. Udall indicated that he would like to dig a hole for himself, and indicate that this in 1977 was the last extension which he would ever support, and the comment was made, "I have never heard such unanimity."

Where is it? I don't see that unanimity now, and I question if anyone says this is the last extension. Will the people really believe that this is the last extension, and do we have any assurances that in fact it will be, if an extension is granted?

Mr. Chairman, Congressman Marlenee of Montana has introduced H.R. 3929, which would require reimbursement for non-Indian defendants in any cause of action brought by the Government on behalf of Indians or Indian tribes. If this extension, this big thing, so to speak, is in fact done for Indians and Indian groups, then I would like to ask that something in return be done for the defendants in these cases, and that some provision like H.R. 3929 be incorporated in the extension.

Thank you, sir.

Mr. DANIELSON. Thank you very much, Mr. Johnston.

[The complete statement follows:]

STATEMENT OF GUY JOHNSTON, PRESIDENT, TRI-COUNTY LANDOWNERS ASSOCIATION, ROCK HILL, S.C.

Mr. Chairman, my name is Guy Johnston, I am a resident of York County, South Carolina, and I live in the area claimed by the Catawba Indians. I am appearing here today on behalf of the Tri-County Landowners Association, an association organized for the purpose of "obtaining and communicating information regarding the claim of the Catawba Indians to land in South Carolina."

By way of background, the Catawba Indians claim that a 144,000 acre tract of land was purchased from them illegally by the State of South Carolina in the Treaty of Nations Ford in 1840. Our citizens have been repeatedly threatened with a land claim lawsuit if a settlement is not reached prior to April 1, 1980.

During the two and one-half (2½) years since a litigation request by Mr. Leo Krulitz, Solicitor, Department of the Interior, our area has suffered severe economic damage because of the mere threat of clouded real estate titles during prolonged litigation. Industrial development in our area has been virtually halted, commercial development has been slowed, transfers of farm and timber-lands have been severely hampered, and even federal disaster relief loans have been difficult to obtain. For nearly a year the U.S. Department of Housing and Urban Development (HUD) withheld from our area nearly $2 million in funds designated for low income housing. These funds had already been appropriated and approved, and were then held back because of the Catawba Land Claim. Now that the statute of limitations on federal involvement in this claim nears expiration, some progress can be seen in settlement negotiations. There now appears to be some urgency to get settlement legislation passed prior to April 1, 1980. The Catawba claim is a long way from being settled. Major issues remain unresolved and differences among factions within the Catawbas continue to hamper progress.

All the parties to this claim have operated under the assumption that the April 1, 1980 statute of limitations would not be extended. The Tri-County Landowners Association believes that the extension granted three (3) years ago provided ample time to develop a settlement proposal or obtain passage of settlement legislation. As I previously pointed out, our region has already suffered severe economic hardship during this period of time. Another extension of the statute of limitations will only prolong our agony and delay the ultimate resolution of this problem.

We are opposed to any extension of the statute of limitations on the filing of claims on behalf of Indians or Indian Tribes. The approach of expiration has helped to move settlement negotiations forward. We cannot afford another four years of the type of damage we have suffered. We deplore lengthy litigation of this claim, but at least we would know that when appeals had run their course, then the case would be over. This is not the case when extension after extension is granted.

Mr. Chairman, a major item which disturbs me is the question of faith in our elected officials and confidence in the laws as they are enacted by our United States Congress. Throughout the United States, the parties to the thousands of Indian claims have acted under the valid assumption that the statute of limitations would expire on April 1, 1980. We have based this assumption on statements made on the record during floor debate on S. 1377, which was the last extension granted in 1977. For the record, at this time I would like to quote from the Congressional Record, page H. 8470 of August 3, 1977:

"Mr. COHEN. Mr. Speaker, I will indicate that there is one thing that is missing from this conference report in terms of the statement of the managers, and that is a reflection of the very strong will as expressed by the House that this is the final extension of the Indian trust section of title 28, section 2415 (a) and (b) dealing with pre-1966 claims.

I think it ought to be very clear that this House has indicated on the record that this is the final extension, and that we are sending a message to the Department of the Interior and to the Justice Department that they had better get busy in processing whatever claims they have because this House will not extend the statute in the future.

"Mr. DANIELSON. Mr. Speaker, I thank the gentleman for his contribution. We has stated the facts very eloquently, and I agree 100 percent.

"Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

"Mr. DANIELSON. I yield to the gentleman from Ohio.

"Mr. ASHBROOK. Mr. Speaker, I just want to make certain that I heard what the gentleman from Maine (Mr. Cohen) said. I believe he used the word "final," f-i-n-a-l. That was the word the gentleman used, was it not?

"Mr. COHEN. I did.

"Mr. ASHBROOK. Mr. Speaker, I thank the gentleman.

"Mr. DICKS. Mr. Speaker, will the gentleman yield?

"Mr. DANIELSON. I yield to the gentleman from Washington.

"Mr. DICKS. Mr. Speaker, I would just like to associate myself with the remarks of the gentleman from Maine (Mr. Cohen). I know there are other Members from other parts of the country who are just as concerned, and I hope that this is the final extension.

"Mr. UDALL. Mr. Speaker, will the gentleman yield once again?

"Mr. DANIELSON. I yield to the gentleman from Arizona.

"Mr. UDALL. Mr. Speaker, I just want to say that as a member of and the chairman of one of the committees that deals with Indian Affairs, I would like to dig a little hole for myself and state for the record that this is the last extension I would support.

"Mr. DANIELSON. Mr. Speaker, I have never seen much unanimity."

Mr. Chairman, where is the unanimity which was mentioned at that time? Where is the faith and belief that our elected representatives will remain true to their word? Where is the trust and respect for our laws which our judicial system demands and we as citizens expect? I submit to you that if you reverse the position which was so eloquently stated in August of 1977, then you will further undermine the confidence that we as citizens must have in our government.

Localities who find themselves threatened with legal action by the U.S. Justice Department cannot afford the quality of legal representation to adequately defend their position in these claims. Congressman Ron Marlenee of Montana has addressed this issue in H.R. 3929, which has been referred to the House Committee on the Judiciary. H.R. 3929 would amend title 28 U.S.C. to "require that the United States reimburse defendants for costs incurred in the defense against any civil action filed by the United States on behalf of any Indian or Indian Tribe." If an extension is granted, then the provisions of H.R. 3929 should be incorporated into that extension. This is only fair. It would guarantee all citizens, Indian and non-Indian equality of representation under the law.

It appears that the Congress of the United States has taken upon itself the duty to right all wrongs and transgressions of past generations. During testimony in 1977 it was disclosed that more than 1,500 outstanding claims had been presented to the Department of the Interior. In December of 1979, Mr. Forrest Gerard, Assistant Secretary for Indian Affairs, Department of the Interior, testified before the Select Committee on Indian Affairs that the number of claims had increased to 9,768. This progression cannot continue. I submit to you, Mr. Chairman, that this government and our citizens cannot right the wrongs of our predecessors. Your goal as responsible representatives of the people should be to pass laws which will insure that no further wrongs are committed in our society. At some point in time we must say, "The past is bygone; we are sorry for the wrongs of our forefathers; now let us move on to better things."

Mr. Chairman, I thank you for the opportunity to appear before you today. My remarks have been brief; however, the concerns which I have expressed are shared by citizens throughout the United States who are being used, threatened by suit, or living in an area that may be under future litigation. I would be happy to answer any questions. Thank you.

Mr. DANIELSON. Mr. Moorhead of California.

Mr. MOORHEAD. On page 1 of your statement, you indicate that settlement of the Catawba Indian claim is in the distant future. Do you think that a lawsuit against the landowners would be more or less likely if the April 1, 1980 deadline is not extended?

Mr. JOHNSTON. I think the filing of the lawsuit would be likely, but I think that would be the impetus which would finally get the parties together and get the detailed negotiations worked out.

I would doubt that the case would ever be litigated. I think it would be settled as a result of the filing.

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Mr. MOORHEAD. I think you may have answered my next question. Would actual litigation have a greater adverse effect on the title and value of your property than the threat of litigation?

Mr. JOHNSTON. At this time there is only a threat of litigation. However, we are hearing now of title insurance companies having totally backed out of the York and Lancaster areas. They will not write title insurance. Therefore, even residential sales have virtually stopped.

I think a period of 3 months or 6 months, while the detailed negotiations were worked out, would have a major impact, yes. If it were allowed to go all the way through appeals, it would have a devastating effect, but I don't think that is the case.

Mr. MOORHEAD. What are your feelings about the Bellmon amendment to S. 2222?

Mr. JOHNSTON. I don't really have an opinion on that, because our claim is already identified. It would not affect our particular case.

Mr. MOORHEAD. You have testified that you like the Marlenee approach. Do you think the Government should be required to reimburse landowners for anything they might agree to pay for attorneys' fees, or do you have some suggestions about limitations?

Mr. JOHNSTON. I might use the term defined in some medical insurance policies, "reasonable and expected rates." There should be some hold on it, yes, but I also think that if the Justice Department realizes that in effect there would be two sets of legal fees paid for a claim, then they would exercise caution in filing some of the cases which might be borderline.

Mr. MOORHEAD. I wonder whether there might be a built-in conflict of interest there. A trustee should not be discouraged from doing that which he feels is his responsibility as trustee, just because there might be a club over him later on. That would be a poor excuse for not filing the suit.

Mr. JOHNSTON. That may be. At the oversight hearings in December, there was testimony by a gentleman from Louisiana who submitted for the record a copy of a contract from the Bureau of Indian Affairs for the purpose of preparing litigation against the landowners in that area, a $55,000 contract.

Now, that's taxpayers' money being used to prepare a suit against the taxpayer. I think that's equally wrong.

Mr. MOORHEAD. Thank you very much.

Mr. DANIELSON. Mr. Mazzoli?

Mr. MAZZOLI. Thank you, Mr. Chairman.

Do you think that 4 more years will wind this up, or do you think this is just another coverup for an extension, just an indefinite type of thing? I hope it doesn't embarrass you to answer the question. I don't want to put you on the spot.

Mr. JOHNSTON. The comment earlier about no concerted effort by the Government until 1979, I think you would see a repeat of that in our particular case. I think we would see very little progress toward negotiation or settlement until June or July 1984, and then we would all be back at the table knocking our heads together, and I think you would also see the same people back here 30 days before it expired, asking for another extension.

Mr. MAZZOLI. Do you think if there were a shorter lease put on this, that this would help or hurt in the fair adjudication of these matters?

Mr. JOHNSTON. I'm not really sure. In the western type cases, strictly contract cases, I'm not sure. In the land claims cases, with which I am familiar, I believe a short period, something reasonable to allow the parties to sit down and discuss the differences and work out an agreement, I believe a shorter period would put a certain amount of emergency into it and require that something be done, and be done now.

Mr. MAZZOLI. If it's a fair question, why do you think the Government is not pursuing these matters and developing the cases?

Mr. JOHNSTON. Being not familiar with the field offices of the Department of Interior and BIA, and such as that, I have heard testimony and I have heard representatives from Indian groups say that to do so would, in fact, point out the shortcomings of the BIA itself and the Interior. I don't have an opinion on that, that I could just quote things, but people have told me that. That would not be my opinion.

Mr. MAZZOLI. Do you think leaving this matter open for another 4 years is just sort of a carte blanche to dibble and dabble and develop more suits that might not be meritorious; or if meritorious, would not be priority, but because they have got a lot of time and they have to do something with that time, that they will make a case, if need be?

Mr. JOHNSTON. That the work expands to fill the amount of time allotted?

Mr. MAZZOLI. Parkinson's law, or something.

Mr. JOHNSTON. I would think that would be very possible.

At the oversight hearings, there was a chart presented which showed a number of claims that jumped from approximately 2,000 to 9,000 in 1979 alone. I don't really believe any representative of Interior, Justice, BIA, or anybody else, has a concept or knowledge of how many claims are out there.

We have heard figures of another thousand or another 5,000. I don't think anybody knows how many claims are out there, and I think probably as the expiration approached again, you would see another dramatic jump in the number of claims.

Mr. MAZZOLI. I know very little about the subject matter, but basically just from reading the papers over the years, some of these are constructed on deeds that go back forever, and some of them are things that aren't really deeds, but recollections and folklore and everything else. If this extension of time would permit people to do things, it could be the fact that perhaps even some mischief could be done with these various cases, and I confess that this is the first I've ever heard of the case, when I walked in today. I'm inclined somewhat toward putting a shorter leash on this thing, just in order that we get the thing disposed of one way or the other. The cases will be practiced up to the year 2000, probably. So it could go on forever. We can at least close the door.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you.

Mr. Kindness of Ohio?

Mr. KINDNESS. Thank you, Mr. Chairman. I have no questions.

Mr. DANIELSON. Mr. Hughes of New Jersey?

Mr. HUGHES. Thank you, Mr. Chairman.

I gather, Mr. Johnston, there are two major areas of claims: Those, first of all, that have not been determined; and those that have been determined, but have not been moved to completion, either by filing complaints and pursuing it, if negotiations fail, or even sitting down and negotiating.

Am I reading that correctly?

Mr. JOHNSTON. I would think so, yes, sir.

Mr. HUGHES. So where we, in essence, find ourselves in just the type of situation in which notice goes out to trial attorneys, beginning when the case is just in its early stages and a case is on a trial list, which doesn't mean anything until you get a notice that it is on for next week, you better have your witnesses ready. Is that what you're saying?

Mr. JOHNSTON. Yes, sir.

Mr. HUGHES. You indicated, I think, by implication, if not directly, that some of the title insurance companies are pulling out of your area and refusing to insure certain lands. Do I understand that correctly?

Mr. JOHNSTON. Yes, sir, that is correct.

Mr. HUGHES. OK. For those that are presently insuring in the areas in question, what type of exception are they incorporating in their title policies, or abstracts, because of the threat of litigation?

Mr. JOHNSTON. There have been for the last 6 to 8 months, to my knowledge, an exception to the Catawba Indian land claim.

Mr. HUGHES. Do you have the language with you?

Mr. JOHNSTON. No, sir.

Mr. HUGHES. Can you furnish that to us?

Mr. JOHNSTON. Yes, sir.

Mr. HUGHES. Mr. Chairman, I wonder if we can receive that.

Mr. DANIELSON. Is there objection? If there is none, it's received in the record.

Mr. HUGHES. I think that's important, because what you are saying is that the threat of problems has impeded the free transfer of title. That's one of the problems.

Mr. DANIELSON. Will the gentleman yield?

Since we had this matter before us in 1976 or 1977, there is one community in Massachusetts in which, for practically the whole city, the title to the land is under a severe cloud, and the same thing is happening. You can't buy title insurance, you can't get loans secured by mortgages, real estate transfers have come to a halt, and you can't sell municipal bonds. Some of these things have to be resolved, but at the same time we have been assured, and I think reasonably, that rather than let the statute expire, which would compel the trustee to file lawsuits forthwith, it's better to extend the statute and try to work it out on the basis of negotiations.

Mr. HUGHES. I understand. Thank you, Mr. Chairman. I'm the new member of this committee, but I do understand a little bit about these title impediments. I live in a little city where they don't permit, by deed restriction, bawdy houses. You can't sell alcoholic beverages. But we do find ways to get around certain problems.

Mr. DANIELSON. Well, I trust the gentleman realizes I was not in any way diminishing his knowledge in this field.

Mr. HUGHES. Of course not.

Mr. DANIELSON. But he certainly hadn't heard of the Massachusetts situation.

Mr. HUGHES. That's correct.

Mr. DANIELSON. The State of Maine is in jeopardy, almost all of it.

The gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I'm like Mr. Hughes, except, of course, he has more experience in the full committee than I do, but I have just a comment. The extension of something that Congress has gone on record as being absolutely against is a difficult matter to get around unless there has been something terribly inequitable that has happened during the last 2 years to make it impossible to enforce.

Now I don't gather from what I have read quickly that there has been anything terribly inequitable, except the BIA or the Interior Department just hasn't pursued these matters very aggressively. Is that a correct understanding?

Mr. JOHNSTON. Not having firsthand knowledge of BIA or Interior's activities nationwide, I would not be able to give an opinion on that.

Mr. GLICKMAN. Well, it is just bad public policy to continue to extend extensions, once you say that they are unequivocally terminable. But, you know, I don't have any problem, if it could be worked out. I think 4¼ years is an awfully long time. I'd rather see about half that, myself.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Glickman.

That concludes the questioning, Mr. Johnston.

I want you to know that although you may feel that you are barking up a very tall tree with a lot of grease on it, we are not unsympathetic to the plight of you and your colleagues in South Carolina. But this is an extremely difficult problem, and while we may smile now and then, we regard it as very serious.

Mr. JOHNSTON. Yes, sir. I certainly appreciate that position.

Mr. DANIELSON. Thank you.

We have no other witnesses. We have a letter from Alan Parker from the Department of Justice, urging adoption of the bill, and urging that section 2, which calls for a listing of claims in the Federal Register, be stricken.

I may add that I believe all of our witnesses want that Federal Register provision stricken. I know our friends in the Indian tribes and nations do. I know of no one who does not, except the person who put it in.

Without objection, the letter from the Attorney General, from Mr. Parker, will be received in the record.

Mr. DANIELSON. I wish to keep the record open long enough to receive the statement from Congressman Holland of South Carolina, who has stated that he will submit one. He hasn't had time as of this noon.

Mr. DANIELSON. We do have a statement from Congressman Morris Udall of Arizona, in which he takes the position that we should pass the bill, and I ask unanimous consent that it be received in the record at this point.

[The complete statement follows:]

PREPARED STATEMENT OF CONGRESSMAN UDALL OF ARIZONA

Mr. Chairman, I appreciate the opportunity to present testimony before the Subcommittee on S. 2222, extending the Statute of Limitations on Indian claims.

As the Chairman knows, I supported the extension legislation in the 95th Congress and urged a four year extension. We compromised on a two and a half year extension.

During the consideration of that last extension bill, I tried to give my colleagues assurances that we would not be back asking for another extension. However, those assurances were made based upon the expectation that the Administration would move expeditiously and responsibly to secure funding to ascertain the number of claims and prepare them for filing.

However, I am advised that this was not the case.

When BIA asked for money in the fiscal year 1978 supplemental, OMB denied their request and told them to fund the operation out of existing money.

BIA was finally funded for this purpose in fiscal year 1979, but through a congressional add-on, not an Administration request.

The BIA began to gear up under that appropriation and then were further frustrated by a OMB-imposed hiring freeze.

Mr. Chairman, this record is hardly an honest attempt on the part of the Administration to implement our intent in extending the Statute and in meeting their trust responsibility.

Based upon that record of neglect in meeting our intention, I do not think that I can, in good conscience, adhere to my position of not requesting another extension.

My concern is not only for the Indian tribes and people who will be harmed by the expiration of the Statute without having their claims filed. Many non-Indians will be unnecessarily damaged by the failure to extend the Statute.

In my own District, negotiations to settle a Papago tribal water claim are nearly complete and legislation will soon be introduced ratifying such a settlement. Chances for passage of this legislation are good.

Yet, despite this imminent settlement, the United States will be forced to file this claim before April 1, 1980, in order to protect the claim. Hundreds of my non-Indian constituents will be forced to retain legal counsel and the pendancy of the litigation will cloud titles and result in economic disruption. All of that would be unnecessary if the Statute was extended and the negotiated settlement permitted to go forward.

Mr. Chairman, this same situation exists in many other cases. Claims are pending and ready to be filed, but negotiations are either underway or clearly a preferred alternative. But the claim must be filed in order to protect it with all the attendant turmoil.

Mr. Chairman, I support the extension, but I think there must be a clear commitment on our part here in Congress to insure that the Administration performs the task set for them.

Mr. DANIELSON. And I would like to ask unanimous consent——

Mr. KINDNESS. Mr. Chairman, could a copy of that last statement be supplied to the members?

Mr. DANIELSON. Mr. Udall's? Surely. We have copies. Would you please, Jim, provide a copy.

My last similar request is that in order to save printing money and duplication of effort, that we incorporate in the record by reference House Report No. 95–505 of July 20, 1977, which was a report on the identical bill in 1977; conference report—that first one should have been House Report No. 375.

The second item would be House Report No. 95–505.

The last being Senate Report No. 96–569.

All of these relate to the same identical subject matter and it will save time and money to simply have them available by reference. Is there objection?

Hearing none, so ordered.

[The document follows:]

Calendar No. 607

96TH CONGRESS, 2d Session } SENATE { REPORT No. 96-569

EXTENDING THE TIME FOR COMMENCING ACTIONS ON BEHALF OF AN INDIAN TRIBE, BAND, OR GROUP, OR ON BEHALF OF AN INDIVIDUAL INDIAN WHOSE LAND IS HELD IN TRUST OR RESTRICTED STATUS

FEBRUARY 7 (legislative day, JANUARY 3), 1980.—Ordered to be printed

Mr. MELCHER, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2222]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2222) to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

1. On page 1, line 5: strike out "30," and insert in lieu thereof "31,".

BACKGROUND AND NEED

I. THE BACKGROUND OF 28 U.S.C. 2415

A. Original act

In 1966 Congress enacted 28 U.S.C. 2415 for the purpose of establishing a statute of limitations for certain contract and tort claims for money damages brought by the United States. The statute imposes a six-year time period in which the government can bring actions based upon contracts with the United States and a three-year limitation for most tort claims filed by the United States. Certain specified tort actions are subject to a six-year limitation.

Before 1966 there was no time limitation imposed on contract or tort claims to be brought by the United States, although there was a time limitation imposed on private individuals. The Act was intended to both remedy this inequity and prevent the presentation of stale claims by the government. It is important to note that the statute only imposes a limitation on claims seeking monetary damages. It does not

bar actions involving titles to land, but any claims for monetary relief arising from these actions must be filed before the deadline.

The statute specifically provided that any claims which arose prior to 1966 were deemed to have accrued on the date of enactment of the Act, i.e., July 18, 1966. The United States thus had a maximum of six years, or until July 18, 1972, in which to bring all of its outstanding claims for damages. The original statute did not specifically cover claims brought by the United States, as trustee, on behalf of the Indians, but as the six-year time limit approached the Interior Department and the Indians became concerned that the statutory limitation might bar them from recovering damages for many wrongs the Indians suffered.

B. Amendment—Five-Year extension to October 13, 1972

In order to provide time to consider a legislative amendment, Congress enacted a ninety-day extension to the July 28, 1972, deadline.

After approving the ninety-day extension, Congress began considering legislation which would allow the United States an additional five years in which to bring claims for money damages on behalf of the Indians. In its report on the bill, which later became Public Law 92–485, the Senate Committee on Interior and Insular Affairs quoted the following from the Interior Department's report:

> The Bureau of Indian Affairs and the Solicitor's Office of the Department have not been able to perform the necessary work to identify all of these wrongs and then develop factual information necessary to get litigation filed. 1972 United States Code Cong. and Adm. News, p. 3593.

An amendment, H.R. 13825, was enacted on October 13, 1972, thereby extending the statute of limitations five more years, to July 18, 1977.

C. Amendment for 2½ year extension—August 15, 1977

On July 11, 1977, President Carter signed House Resolution 539 (Public Law 95–64) extending the statute of limitations an additional month, until August 18, 1977.

After providing the 30-day extension, Congress began considering legislation (S. 1377) which would allow the United States an additional 10 years in which to bring claims for money damages on behalf of the Indians. When the bill, S. 1377, was reported by the Select Committee on Indian Affairs on May 27, 1977, it was amended to reduce the extension to 4½ years. The companion bill in the House (H.R. 5023) was amended on the floor of the House reducing the extension to 2 years. The conferees settled for a 2½-year extension of the statute of limitations, setting the new date at April 1, 1980.

II. FUNDING OF STATUTE OF LIMITATIONS PROJECT (2415 PROJECT)

Immediately following enactment of the 2½ year extension, the Bureau of Indian Affairs attempted to secure a supplemental appropriation of several million dollars to its fiscal year 78 budget to enable it to undertake the necessary research to identify and process outstanding claims. This request for a supplemental appropriation was not passed on to the Congress. Instead, the Bureau was instructed to seek funds for fiscal year 79. BIA reprogramed some monies in order to begin the necessary studies.

The President's budget for fiscal year 79 did not include any funding for the Statute of Limitations Project. Despite the failure of the executive branch to seek funding, the Congress appropriated $4 million for fiscal year 79 for the specific purpose of funding this project. These funds became available in October 1978, just at the time the Executive branch imposed a 6-month hiring freeze on all agencies. BIA sought an exemption for this project but this request was denied. Early in 1979 the BIA began letting contracts to outside agencies to facilitate the necessary studies. Since the 1980 statutory deadline was fast approaching, these contracts necessarily were of short term.

For fiscal year 80 the President's budget included a request for $3.5 million to fund the 2415 project. Congress increased this figure to its present level of $6 million.

III. BUREAU ACTIVITY

In 1977 when the statute of limitations was last extended, the Department of the Interior had before it over 340 pre-1966 claims. They noted that hundreds of pre-1966 claims were still being identified and they estimated that unprocessed cases could well exceed 1,000 nationwide. (See letter of Leo Krulitz to the Committee dated May 2, 1977 and July 15, 1977). A partial list of claims was presented to the Committee by letter of June 8, 1977. These claims range from trespass damages for unlawful rights of way over individual trust allotments, to unlawful extraction of minerals and oil and gas from Indian lands, to improper diversion of water from Indian reservation lands, to claims for substantial areas of land along the eastern seaboard for violations of the 1790 Indian Intercourse Act.

In January of 1979, the Bureau had identified approximately 700 cases. Early in 1979, approximately six months after funds became available, the Bureau contracted with outside agencies such as Legal Services Corporation and the All Indian Pueblo Council to conduct independent research on outstanding claims. This research has led to a quantum leap in the number of cases the Bureau must process. The testimony of Assistant Secretary Forrest Gerard indicates that the Bureau now has in excess of 9,500 claims before it. Mr. Gerard states that the Bureau has been able to process in excess of 2,700 claims either by rejection for lack of merit or by successful resolution of the claim without litigation.

IV. CURRENT STATUS

The number and nature of the potential claims identified in the Committee hearings varies greatly from one area of the country to another.

In the North Central States, California, and, to a lesser extent, the Pacific Northwest, large numbers of "forced fee" cases have been identified. These involve individually owned trust allotments in which the Department of the Interior issued fee patents to the land without the consent or approval of the Indian owner, thus subjecting the property to state and local taxation, exposing the property to debt foreclosures, or freeing it for sale without requirement of Secretarial consent. Many other claims arise from trespass over Indian owned property by utility companies or state or local governments. In Arizona and California there are claims for improper pumping or diversion of water. In many areas of the country there are significant claims

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for unlawful extraction of mineral resources. In New Mexico the claims of the Pueblos cannot even be identified until new and extensive surveys are completed.

In some of these areas there has been movement toward negotiated resolution of claims. In other subject areas the recent identification of claims has not allowed adequate opportunity to even formulate concepts for settlement discussions. In Minnesota, a 1977 opinion of the State Supreme Court indicated that individual Indian's may have meritorious claims on large numbers of allotments, title to which may have been unlawfully acquired. A large number of these claims arise on the White Earth Reservation. It appears there are possibilities for negotiated settlement of these claims but there has not been sufficient time to commence settlement discussions.

V. EFFECT OF EXPIRATION OF STATUTE

The statute of limitations does not bar an Indian tribe, band, or group, an individual Indian, or the United States acting on their behalf from bringing a claim for title to lands. It does bar the United States from bringing an action on behalf of an Indian tribe, band, or group, or individual Indian for money damages arising from tort or contract where the cause of action accrued prior to July 18, 1966.

A question has been raised whether the statute would bar an Indian tribe or individual from bringing a pre-1966 damage claim on their own behalf.

Interior Department witnesses testified that the issue was arguable but expressed the view that the statute would probably be held to bar claims of Indians acting in their own behalf. In an opinion issued November 20, 1979 the Library of Congress reached a similar conclusion. This opinion is included as a Committee exhibit in the record of oversight hearings held December 17, 1979.

A question has also been raised regarding the potential liability of the United States to Indian tribes or individuals for failure to actively pursue claims on their behalf. The question springs from the trust relationship which exists between the United States and the Indian tribes. The Library of Congress opinion also addressed this issue and concluded that this issue too, is not free from doubt. There have been some judicial decisions holding the United States liable for mismanagement of trust property. One of these decisions, *Mitchell* v. *United States*, 591 Fed. 1300 (Ct. Cl. 1979), is presently under review by the Supreme Court (47 USLW 3813, cert. granted). The decision in this case will be relevant to the issues addressed here. It will not be dispositive and litigation may be anticipated if the statute of limitations is allowed to expire.

VI. NEED FOR EXTENSION OF STATUTE OF LIMITATIONS

As previously noted, the Department of the Interior presently has before it in excess of 9,500 claims. Witnesses for both the Departments of Interior and Justice stated that they would not be able to complete work on the pre-1966 Indian claims thus far identified within the time allowed by the present statute of limitations. This testimony was supported by many additional witnesses.

The Department of the Interior recommended at the Committee hearing on December 17, 1979, that the limitation on tort claims, (28 U.S.C. 2415(b)) be extended an additional 2 years. They did not seek any extension of limitations for damage claims arising from contracts (28 U.S.C. 2415(a)). The Committee believes that such a distinction would simply inject a spurious legal issue that would unnecessarily cloud further proceedings. For that reason the Committee elected to treat claims arising from contract in the same manner as claims arising from torts.

Failure to extend the time limits now provided will, unnecessarily, bar many meritorious claims of Indian tribes and individuals; it will cause the filing of a multitude of lawsuits which might be rejected if adequate time is allowed for administrative review on the merits; and it will deprive the United States of adequate opportunity to negotiate settlements outside of court. The mass filing of these cases will also cause unnecessary financial burdens on private individuals and local governments which may be named as defendants, and will additionally tax the resources of the Departments of the Interior and Justice, U.S. attorneys' offices, and courts.

In addition to providing additional time for the processing of those claims thus far identified, fairness to the Indian people dictates that additional time be provided for the orderly investigation, identification and processing of remaining claims. Eight years have elapsed since the first extension of time was granted, yet the Department has not allowed sufficient personnel for investigation of these claims. From 1972 to 1977 the record of the Department of the Interior in investigating these claims is spotty at best. Only two offices reported any significant claim identification prior to the 1977 extension: the Field Solicitor's Office in Phoenix, Arizona on water claims in that area and the Regional Solicitor's Office in Twin Cities, Minnesota on land claims within the state. Since 1977, the efforts of the Interior Department are characterized by fits of "stop-start" resulting from delay in appropriations; employment freezes; and then fast closing deadlines.

A time limit on investigation must be drawn, but fundamental fairness dictates that additional time for investigation be allowed. The monies which have been appropriated for fiscal year 1979 and fiscal year 1980 to conduct these studies have provided necessary resources to conduct these studies. Yet the process for fiscal year 1980 has been interrupted by the impending statutory deadline. If the extension to December 31, 1984, is granted, Congress should provide funding for at least fiscal year 1981 to complete the investigative field studies. After fiscal year 1981 additional funding for claim identification should be provided only on a selected "as needed" basis. For example, the claims of the Pueblos of New Mexico cannot be identified until substantial surveys have been conducted. This is a time consuming process which in itself may require separate funding.

The additional time provided by S. 2222 should enable the Departments of Justice and Interior sufficient time to determine those claims which have merit, and initiate settlement negotiations or litigation. It will also provide the Congress an opportunity to consider legislative solutions which are fair and just to all parties concerned.

Legislative History

On December 17, 1979, the Senate Select Committee on Indian Affairs held oversight hearings on the progress of the Department of Interior and the Department of Justice in identifying and processing claims of Indians and Indian tribes which might be affected by the Federal statute of limitations (28 U.S.C. 2415). The testimony received at that hearing demonstrates a strong and immediate need for an amendment of this statute to extend the time limits.

S. 2222 was introduced by Senator Melcher on January 25, 1980, and is cosponsored by Senators Levin, Inouye, McGovern, Cranston and DeConcini. There is no companion measure pending in the House.

Committee Recommendation and Tabulation of Votes

The Select Committee on Indian Affairs, in open business session on February 7, 1980, with a quorum present, recommends by a vote of three in favor and one opposed, that the Senate pass S. 2222 with an amendment.

Yeas	*Nays*
Mr. Melcher	Mr. Cohen*
Mr. Inouye	
Mr. DeConcini	

*By proxy.

Committee Amendments

The Select Committee on Indian Affairs adopted an amendment to change the date of December 30, 1984 as it appears on page 1, lines 5 and 6, to December 31, 1984. The purpose of this amendment is to make the expiration date in section 1(a) of S. 2222 conform to the expiration date in section 1(b).

Section-by-Section Analysis

Section 1(a) will extend to December 31, 1984, the period of time in which the United States may bring an action for damages arising from a contract on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian where the claim accrued prior to July 18, 1966.

Section 1(b) will extend to December 31, 1984, the period of time in which the United States may bring an action for damages arising from a tort on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian where the claim accrued prior to July 18, 1966.

Cost and Budgetary Consideration

The cost estimate for S. 2222 as provided by the Congressional Budget Office is outlined below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., February 7, 1980.

Hon. John Melcher,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

S. 2222, a bill to extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status, as ordered reported by the Senate Select Committee on Indian Affairs, February 7, 1980.

The bill would extend the deadline for commencing certain legal actions on behalf of Indians from April 1, 1980 to December 31, 1984. Based on this review, it appears that no additional cost to the government would be incurred as a direct result of the enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 5(c) of rule XXIX of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the bill S. 2222 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee from the Departments of the Interior and Justice setting forth executive agency recommendations relating to S. 2222 are encompassed in the testimony of the Departmental witnesses in the December 17, 1979, oversight hearings. The prepared statements are set forth below:

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, it is a pleasure to appear before you to discuss matters relating to the statute of limitations claims program. I would like, in my testimony today, to describe the scope of the task, our efforts to carry out the task, and some of the problems we have encountered since the extension was granted in 1977.

I will not burden you with a detailed background of the program. That history has been stated in the various reports relating to previous extensions. It will be helpful, however, to mention some points that may place in proper perspective the situation that we face today.

The program began developing after July 18, 1966, the date the statute of limitations first went into effect. The statute limited to 6 years the time in which the United States, in carrying out its trust responsibility to Indians, could sue third parties for damages to the property of Indians arising out of tort or contract. In 1972 the 6-year limitation was extended 5 more years, or until July 18, 1977, as to claims which accrued before July 18, 1966, the date of the first act.

In 1977, in testimony before this Committee on the then pending extension bill, we stated that we had identified several hundred pre-1966 claims, and that we anticipated well over a thousand nationwide. We were then given a 2-year-and-8-month extension, until April 1, 1980.

For fiscal year 1978, we went as far as we could with existing resources. The Department formulated a comprehensive plan of action during fiscal year 1978 and aggressively sought funds to implement

such a plan. Immediately after the extension was granted, work began on the formulation of a claims processing plan and on the preparation of a budget request. By February 1978 the plan was initiated with existing resources at the field level with an intensive training phase. The plan included claims processing procedures, time limits, directions on communication channels, recommended forms, suggested publicity, and improved liasion with the Justice Department. Our plan was put into practice during fiscal year 1978, and while we did process some of our backlog it was clear we needed funding if we were to meet the needs of the claims problem.

Specific funding to implement our statute of limitations claims program was first provided for fiscal year 1979. Just as we were launching our program at the beginning of fiscal year 1979, we were slowed for 6 months by a hiring freeze. When the thaw came in March it left us with about a year to process a then existing inventory of about a thousand claims. In addition our plans called for an all-out search for unidentified claims and the referral of all worthwhile claims to the Department of Justice no later than November 30, 1979. The reason for the November date was that the Department of Justice needed at least 4 months to prepare and filed the claims in court.

The all-out search mentioned above was conducted in the summer of 1979. By the end of the summer we had uncovered a large number of potential claims, over 4,500. The potential claims continued to arrive, and by December 1, 1979, our count of identified potential claims reached a grand total of 9,768. We have illustrated this growth on the attached chart. Our search experience also leads us to believe that another 5,000 or more identifiable claims in the field may not yet be inventoried.

The number of these potential claims resulted in an extension of our Justice Department referral date to December 28, 1979, a move which may cause serious inconvenience to the Justice Department.

We managed to resolve over 2,700 of the grand total mentioned above either by rejection or by successful resolution of the claim to the benefit of the Indian claimants. To date we have referred about 100 litigation reports to the Department of Justice covering about 2,000 claims. Our Solicitor's office currently has about 2,700 claims on hand to complete and the BIA about 2,200 such claims. A currently undetermined number of worthwhile claims among our backlog of 4,900 claims have little chance of making it to court by April 1, 1980. Included in this number are most of the largest and most difficult claims we have, as well as some that may be invalid or of a minor nature.

Our claims program has affected a significant number of our citizens in this country. In many instances hardships may result as a result of our suits. In many of these same instances we are dealing with regaining title to property under circumstances in which defendants through no fault of their own are holding by void title. The title issues in these claims are not subject to the statute of limitations as are the tort issues.

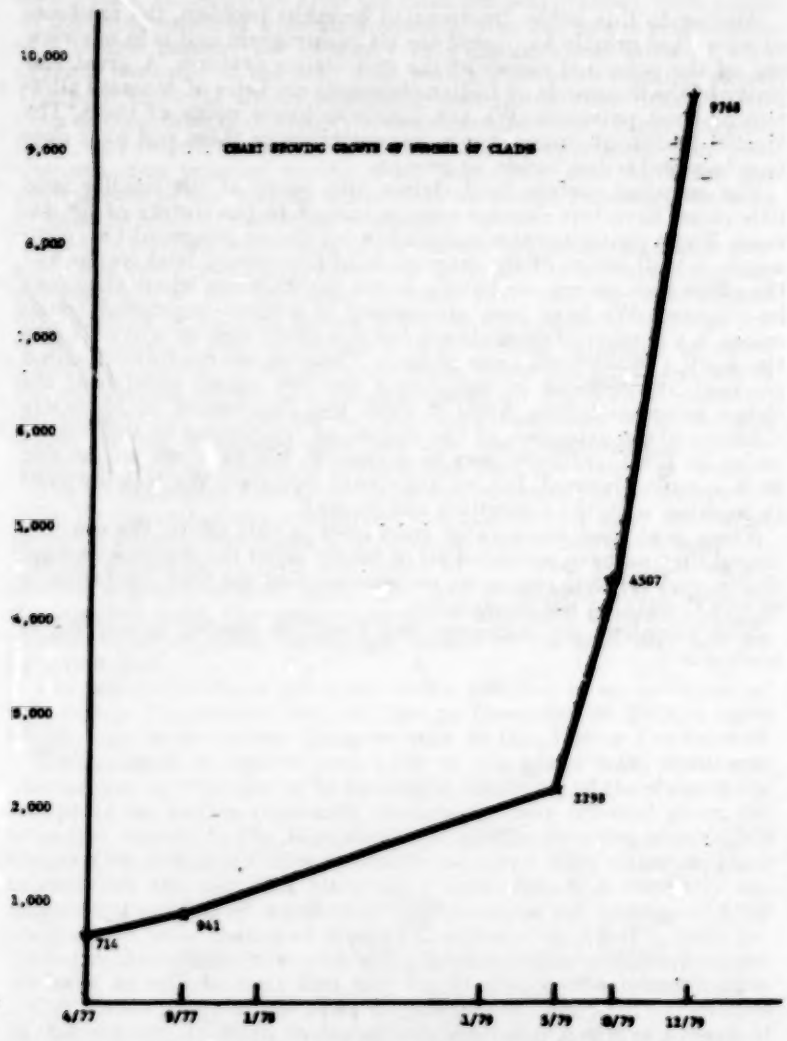
Many prospective defendants are Indians. Other prospective defendants are immune from suit, such as Indian tribes and the Federal Government. In some instances defendants are corporate entities. In any case, under the time constraints we face, we are unable to give the vulnerable defendants time to work out amicable settlements.

Adding to this is the fractionated heirship problem, the existence of which has greatly hampered the claims program and is in our view one of the principal causes of the tort claims problem. A great majority of the thousands of Indian claimants are heirs of deceased allottees or trust patentees. We are unable to locate many of them. The United States, of course, has a responsibility to them just as it does to recognized tribes, bands, or groups.

The so-called eastern land claims, like many of the smaller land title cases, have tort damage aspects subject to the statute of limitations. These claims are also included in our claims program. This committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated. We have been attempting to achieve negotiated settlements in a number of these claims, but it is likely that we will not make the April 1 deadline on some of them. Thus, we are confronted with a physical impossibility in completing the tort claims portion of the claims program before April 1, 1980. For this reason we currently believe a short extension of the statute of limitations on tort claims under 25 U.S.C. 2415(b) may be necessary. We have not yet decided on a specific proposal, but we anticipate doing so. We look forward to working with the committee and its staff.

There is at least one area of good news in this affair. We are convinced that we have processed all or nearly all of the contract damage claims, and for that reason we recommend that the time limitation in 28 U.S.C. 2415(a) not be extended.

This completes my statement and I will be pleased to respond to questions.



STATEMENT OF MYLES E. FLINT, CHIEF, INDIAN RESOURCES SECTION, LAND AND NATURAL RESOURCES DIVISION

Mr. Chairman and members of the subcommittee, I have been asked to appear this morning to discuss with you the status of processing of statute of limitation matters. On July 18, 1966, Congress enacted a general statute of limitation governing claims by the United States. This statute was codified as 28 U.S.C. 2415 and 2416. Under that statute, Congress specified a number of time limitations on which various causes of action could be initiated by the federal government. The stat-

ute, in that portion pertinent to our discussion today, provided that all actions on behalf of Indian tribes, groups or bands, must be commenced within six years of the time the action accrued. Those actions which accrued prior to the passage of the act were deemed to have accrued on the date the act was passed—that is July 18, 1966.

Thereafter the statute with respect to Indian claims has been extended twice. In 1972 Congress extended the statutory period from six to eleven years—from July 18, 1972 to July 18, 1977. When the limitation period covered by that statute came to an end in July of 1977, Congress again extended the statute. At that time Congress, by Public Law 95–103, extended the limitation for pre-1966 claims until April 1, 1980.

The 1977 legislation was supported by the administration. At that time the Department of the Interior asserted that a substantial number of valid claims existed which would be barred unless the statute were not extended. It argued that as there had been a sufficient effort to develop these claims, it would be improper for the United States not to extend the statute.

The Department of Justice supported the extension as well. Our primary reason for supporting the legislation was to permit efforts to commence to settle a number of eastern land claims which the Department of the Interior was then considering for referral to the Department of Justice. It was the view of the Department of Justice at that time that these were matters which could best be settled through legislation rather than litigation. That still is our view.

Shortly before the passage of the 1977 extension, the Department of the Interior transmitted a number of requests that the Department of Justice initiate litigation with respect to a number of eastern land claims. It requested that litigation be initiated only in the event the statute of limitation for damage claims were not extended. In addition Interior requested that no litigation be initiated while negotiations for settlement were being considered or underway. In 1978 Attorney General Bell wrote Secretary Andrus advising that: "After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas." Shortly thereafter, at the Attorney General's direction, we apprised the Court in the Maine litigation that he had determined not to sue the landowners in that state. The Attorney General specifically stated he was commenting only with respect to the landowners and that litigation against the State was a different matter. A copy of the Attorney General's letter is attached. We believe that you should be aware of this decision while considering activities with respect to the statute.

Since passage of the last extension in 1977 we have worked continuously to keep apprised of the Department of the Interior's efforts to identify and develop litigation requests for transmittal and also to assist them in its efforts. In February of 1978 the Department of the Interior had a 2-day seminar for field personnel from both the BIA and the office of the Solicitor to review Interior procedures to locate and develop information concerning any valid claim which would be affected by the statute. I attended that session to learn of their program and also to advise those officials of the procedures to be followed by the Justice Department with respect to the statute of limitations claims.

Since that time there have been numerous exchanges of correspondence, discussions and meetings between the staffs of the Lands Division and the Office of the Solicitor to review the status of Interior's program. In each instance we have encouraged Interior to refer all matters to Justice as soon as they were properly prepared.

Only a few cases were referred prior to 1979. These cases have been acted on, returned because the reports are inadequate or are being held in abeyance pending Interior obtaining more information. Between January 1 and December 10, 1979, the Interior Department has referred 60 requests for litigation to this Department which it has identified as being affected by the statute of limitations. Of that number 44 have been received in the last three months. We are reviewing these requests as quickly as possible to determine what actions should be taken on them. In some instances we are declining the requests to initiate litigation because they lack legal merit. In others we will prepare and file complaints in the near future.

At this time the majority of the requests relate to claims in Minnesota and New Mexico. We are advised that other claims are being developed in other states as well.

The Deparment of Justice defers to the Department of Interior as to whether or not an extension of this statute of limitations is necessary.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 30, 1978.

Hon. CECIL D. ANDRUS,
Secretary of the Interior,
Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: From time to time your Solicitor, Mr. Leo Krulitz, has forwarded litigation reports on various ancient Eastern Indian claims to my Assistant Attorney General for Land and Natural Resources, Mr. James Moorman. I refer specifically to three claims in New York (Cayuga, Oneida and St. Regis-Mohawk), one in South Carolina (Catawba), and one in Louisiana (Chittimacha). These reports have not been accompanied by requests to sue immediately, but rather with requests that they be held for later suit pending preliminary settlement negotiations. I believe it is incumbent upon me to inform you of my views on whether suit should ever be filed so that you can better carry out your duties with regard thereto.

At our luncheon meeting on November 29, 1977, you and I generally approved of a settlement approach whereby the Administration would make an omnibus proposal to Congress to settle these claims. My only reservation then and now was that I would not support a settlement bill which forced anyone (other than a state) to give up land.

It appears to me that the settlement process is going slower than we anticipated and that it may not be able to get all the interested parties to agree. At our meeting on November 29 you will recall that Leo Krulitz suggested he would have a bill in April or May of this year. I am under the impression that should settlement discussions fail you may expect that the Department of Justice would actually sue landowners in the claim areas. In addition, the Administration's proposed Maine Claim bill will raise a question in the public's mind as to whether or not we intend to treat the small landowners the same in New York, South Carolina and Louisiana. As you know, the Admin-

istration proposes to submit a bill to Congress on the Maine claims which would extinguish Indian title to all land holdings up to 50,000 acres per owner and provide $25,000,000 in payment to the tribes.

After careful thought, I have decided that I will not bring suit against the landowners in the New York, South Carolina, or Louisiana claim areas. I have a number of questions about the legal and factual issues in these suits and question whether they can be won. Furthermore, the fact that the landowners are completely innocent of any wrongdoing weighs heavily against suing them. Finally, the Administration's policy decision to relieve small landowners in Maine from suit through a legislative settlement recommends the same relief to others similarly situated.

This is not to say that the tribes involved do not have some equitable complaint, using that term in the broadest sense. Other tribes have been compensated over the years for the ancient takings which occurred as a result of the western movement and settlement of the nation. However, it is completely within the power of Congress to remedy the tribal claims by the process of ratifying the ancient tribal agreements with the states. Such ratification could be accompanied by payments to the tribes in appropriate amounts. In the alternative, the tribes could be given a cause of action against the United States in the Court of Claims.

My decision applies only to private landowners. I am undecided as yet with regard to suits against the states of New York, South Carolina or Louisiana. There are several considerations. For example, on the one hand it is true that those states bear some responsibility for the title problems. On the other hand, suits against the states are in effect suits against public lands which involve such things as highways and parks.

As a matter of principle, I believe the landowners should know of my decision not to sue them as soon as possible. The decision could be announced at a time upon which you and I agree. My inclination is to announce it at the same time that the Administration sends up the Maine bill. I would also recommend that the Administration commit to introduce a bill to solve the private landowners' title problems in the claim areas in New York, South Carolina and Louisiana.

Sincerely yours,

GRIFFIN B. BELL,
Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill S. 2222, as ordered reported, are shown as follows:

§ 2415. Time for commencing actions brought by the United States

(a) Subjcet to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been

rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: Provided further, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: Provided further, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed [after April 1, 1980] *after December 31, 1984*, or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: Provided, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversions of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought [on or before April 1, 1980.] *on or before December 31, 1984.*

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

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95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-505

AMENDING THE STATUTE OF LIMITATION PROVISIONS IN SECTION 2415 OF TITLE 28, UNITED STATES CODE, RELATING TO CLAIMS BY THE UNITED STATES ON BEHALF OF INDIANS

JULY 20, 1977.—Ordered to be printed

Mr. DANIELSON, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1377]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1377) to extend the time for commencing actions on behalf of an Indian tribe, band, or group, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That (a) the third proviso in section 2415(a) of title 28, United States Code, is amended by striking out "after August 18, 1977" and inserting in lieu thereof "after April 1, 1980".

(b) The proviso in section 2415(b) of title 28, United States Code, is amended by striking out "on or before August 18, 1977" and inserting in lieu thereof "on or before April 1, 1980".

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

GEORGE E. DANIELSON,
MO UDALL,
BARBARA JORDAN,
R. L. MAZZOLI,
HERBERT E. HARRIS II,
CARLOS MOORHEAD,
WILLIAM S. COHEN,
Managers on the Part of the House.

JAMES ABOUREZK,
HOWARD M. METZENBAUM,
JOHN MELCHER,
MARK O. HATFIELD,
DEWEY F. BARTLETT,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill S. 1377, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The difference between the Senate bill, the House amendment and the substitute agreed to in conference are also noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Two changes made by the House amendment to S. 1377 were necessitated by the fact that section 2415 of title 28, United States Code, was amended on July 11, 1977 when the House Joint Resolution 539 was approved as Public Law 95–64. That law deleted the words "more than eleven years after the right of action accrued" from the third proviso of section 2415(a), and inserted the words "after August 18, 1977" in their place. This change in the law extended for 30 days the statute of limitations applicable to contract actions for money damages which accrued prior to July 18, 1966 and are asserted by the United States on behalf of Indians. The House amendments eliminated the reference in S. 1377 to the language in the third proviso of subsection (a) of section 2415 already deleted by Public Law 95–64, that is, the words "more than eleven years after the right of action accrued" and in their place provided for a deletion of the words "after August 18, 1977" from that proviso of section 2415(a) in order to provide for a new date for the expiration of the statute of limitations for contract actions subject to that proviso. The Conference Report adopts the same language and fixes the new date as April 1, 1980 for such actions.

The second change made by the House amendment to S. 1377 necessitated by the enactment of Public Law 95–64, related to the proviso in subsection (b) of section 2415. Public Law 95–64 deleted the words "within eleven years after the right of action accrues" from that proviso and, by inserting the words "on or before August 18, 1977", provided for a 30 day extension for the bringing tort actions by the United States in behalf of Indians which accrued prior to July 18, 1966. The House amendment struck the words "within eleven years after the right of action accrues" and in their place provided for the deletion of the words "after August 18, 1977" from the proviso in sec-

tion 2415(b) in order to provide for a new date for the expiration of the statute of limitations for the tort actions subject to that proviso. The Conference Report adopts the same language and fixes the new date for the expiration of that statute of limitations as April 1, 1980 for those actions.

GEORGE E. DANIELSON,
MO UDALL,
BARBARA JORDAN,
R. L. MAZZOLI,
HERBERT E. HARRIS II,
CARLOS MOORHEAD,
WILLIAM S. COHEN,
Managers on the Part of the House.

JAMES ABOUREZK,
HOWARD M. METZENBAUM,
JOHN MELCHER,
MARK O. HATFIELD,
DEWEY F. BARTLETT,
Managers on the Part of the Senate.

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-375

AMENDING THE STATUTE OF LIMITATIONS PROVISIONS IN SECTION 2415 OF TITLE 28, UNITED STATES CODE, RELATING TO CLAIMS BY THE UNITED STATES ON BEHALF OF INDIANS

JUNE 1, 1977.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DANIELSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5023]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5023) to amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 5: Strike "eleven years" and insert "more than eleven years after the right of action accrued".

Page 1, lines 5 and 6: Strike "twenty one years" and insert "after December 31, 1981".

Page 1, lines 8 and 9: Strike "eleven years" and insert "within eleven years after the right of action accrues".

Page 1, lines 9 and 10: Strike "twenty one years" and insert "on or before December 31, 1981".

PURPOSE

The purpose of the proposed legislation, as amended, is to amend section 2415 of title 28, United States Code, to extend to December 31, 1981, the time for the United States to file tort or contract actions in behalf of Indians which accrued prior to July 18, 1966.

STATEMENT

The Department of the Interior in its report to the committee on the bill recommended the enactment of the bill as amended by the committee. The Department of Justice also recommends the enactment of the amended bill.

On July 18, 1966, section 2415 of title 28 was enacted into law and it for the first time imposed a statute of limitations on tort or contract suits brought by the United States. The statute of limitations also applied to actions brought by the United States as Trustee for Indians. In 1972, the Congress extended the limitations period to July 18, 1977 for actions for monetary damages brought by the United States in behalf of Indians.

Because of the difficulties in identifying and processing these claims, the Department of the Interior has recommended that the statute of limitations be extended until December 31, 1981 for this specific group of claims. The committee amendment would extend the limitation period to December 31, 1981 as recommended by the Department.

The Office of the Solicitor of the Department of the Interior estimates that there could be many pre-1966 claims as yet unidentified or still being asserted that now would have to be filed by July 18. Nationwide the unprocessed cases could amount to well over 1,000. The major reason why the previous 5-year extension was insufficient is that many tribes have only become aware of their tort and contract remedies in the last few years and thus have not, until recently, had adequate procedures to document claims. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977.

In testimony before the Senate Select Committee on Indian Affairs Mr. Leo H. Krulitz, Solicitor of the Departent of the Interior stated that serious concern has been expressed by Indian representations that the expiration of the present statute of limitations on July 18, 1977 could bar them from recovering damages in numerous causes that arose before 1966 because many of their claims may not be processed before the statute of limitations runs out. Accordingly, in behalf of the Department, the Solicitor recommended that the statute of limiations in 28 U.S.C. 2415 be extended until December 31, 1981 for claims brought by the United States on the behalf of Indians where the cause of action arose prior to 1966.

In 1972, when this committee reported the bill H.R. 13825 providing for the previous extension for commencing actions on behalf of Indian tribes, bands, or groups (House Report No. 92–1267, 92d Congress, 2d Session), it was observed that the claims which accrued prior to July 18, 1966 include a number of very complicated matters, and further that the identification of the claims and the development of their factual and legal basis were difficult.

In its report on the present bill the Interior Department stated that the 5-year extension granted in 1972 did not solve the problem. The Department advised the committee that it found it difficult to estimate the number which remain unprocessed. As an example, the Department's Field Solicitor's Office in Phoenix, Ariz., has developed approximately 35 claims in their geographical area which they will attempt to process by July 18, 1977. The Twin Cities' Field Solicitor's Office, covering Minnesota, Iowa and Wisconsin, has developed 167 cases. The Office of the Solicitor estimates that there could be many pre-1966 claims as yet unidentified or still being asserted that would have to be filed by July 18. Nationwide the unprocessed cases could amount to well over 1,000. As has been noted, a major reason why the 5-year extension was insufficient is that many tribes have only become

aware of their tort and contract remedies in the last few years and thus have not, until recently, had adequate procedures to document claims as they arose. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977. In testimony before the Senate on a bill similar to H.R. 5023, the Interior Department witness further noted the tort and contract remedies which are involved in this particular group of claims have become better defined by the courts in the last few years. The Department witness further stated that the Department of the Interior had not, until recently, had adequate procedures to document claims as they arose. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977.

The Department of Justice in its report to this committee and also in a statement submitted at the May 3, 1977 hearings stated that it supports an amendment of the statute of limitations to extend the time in which the United States can bring actions on behalf of Indian tribes for claims accruing prior to July 18, 1966.

The Justice Department sues on behalf of Indian tribes only at the request of the Solicitor of the Department of the Interior. The Justice Department has pointed out that while a few of the matters already referred to it by Interior might be affected if the current July 18, 1977 limit in the present statute were not changed, the greater problem is with those claims which have not yet been unearthed by the Department of the Interior or which have not been investigated to the extent that they can be referred to the Justice Department for litigation.

The conclusion of the Department of Justice is that an extension of the statute until December 31, 1981, when coupled with an effort by the Department of the Interior to find and investigate these claims, would be a fitting and appropriate action in view of the Government's traditional role of guardian and trustee for the Indian.

In testimony before the Senate Select Committee, there was a discussion of a number of matters now pending in the Department of Justice which could be affected by an expiration of the statute of limitations. These include the claims of the Maine Passamaquoddy and Penobscot Indian violations of the Indian Trade and Intercourse Act.

Information submitted to the Subcommittee on Administrative Law and Governmental Relations in connection with its consideration of H.R. 5023 referred to the problems which could arise if the Government were requested to file a suit covering these particular claims in order ot meet the July 18, 1977 deadline.

At a hearing before the Senate Select Committee on Indian Affairs on May 12, 1977, the Governor of Maine, the Honorable James B. Long and the Honorable Joseph E. Brennan, attorney general of the State of Maine testified concerning the complexities of the Maine litigation. Attorney General Brennan stated that the position of the State of Maine is that an extension of the statute would offer more opportunity to find a possible solution to the matter without litigation. He, too, noted that the present deadline of July 18, 1977 is so close that without an extension, a protective lawsuit, with all the problems it could create may be unavoidable.

In its report to the committee on the bill, the Department of Justice referred to the relationship of this bill to the claims by the Indians

of the State of Maine and indicated that the passage of the bill would obviate a need for a special bill to deal with the limitations problem as to those particular claims. In this connection, the Department of Justice stated:

> The Department of Justice at one time intended to submit a bill to extend the statute of limitations for those claims which the United States may assert on behalf of the Indians of the State of Maine arising out of trespasses on their ancestral aboriginal landholdings. H.R. 5023 addresses on a broader scale the same problem and the passage by the Congress of H.R. 5023 would render unnecessary the passage of legislation specifically for the benefit of the Maine Indians.

As has been stated, the Department of Justice recommends enactment of the amended bill providing for an extension to December 31, 1981.

The committee agrees that there is a clearly defined need for the amendment provided in this bill, and that prompt congressional action is necessary. It is recommended that the amended bill be considered favorably.

Statements Under Clause 2(l)(2)(B), Clause 2(l)(3) and Clause 2(l)(4) of Rule XI and Clause 7(a)(1) of Rule XIII of the House of Representatives

committee vote

(Rule XI 2(l)(2)(B))

On May 24, 1977, the Full Committee on the Judiciary approved the bill H.R. 5023 by a record vote of 26 yes and 5 no.

cost

(Rule XIII 7(a)(1))

The enactment of this bill will not require any new or additional authorization or appropriation of funds.

oversight statement

(Rule XI 2(l)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility with reference matters involving claims matters and related administrative and judicial procedures in accordance with Rule VI (b) of the Rules of the Committee on the Judiciary. The favorable consideration of this bill was recommended by that subcommittee and the committee has determined that legislation should be enacted as set forth in this bill.

BUDGET STATEMENT

(Rule XI 8(l)(3)(B))

As has been indicated in the committee statement as to cost made pursuant to Rule XIII (7)(a)(1), the bill will not require any new or additional authorization or appropriation of funds. The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by Clause 2(l)(3)(B) of Rule XI.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

(Rule XI 2(l)(3)(C))

The estimate received from the Director of the Congressional Budget Office is as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., June 1, 1977.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5023, a bill to amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians, as ordered reported by the House Committee on the Judiciary.

Based on this review, it appears that no significant additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

(Rule XI 2(l)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(l)(3) of House Rule XI.

INFLATIONARY IMPACT

(Rule XI 2(l)(3))

In compliance with clause 2(l)(4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 18, 1977.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 5023, a bill "To amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians.

We recommend that the bill be enacted if amended as suggested herein.

The act of July 18, 1966 (28 U.S.C. 2415) imposed a statute of limitations on tort or contract suits for money damages brought by the United States both on its own behalf and, in its capacity as trustee, on the behalf of Indians. The United States had 6 years from the date of enactment of the 1966 act to file claims, on the behalf of Indians, that arose prior to the date of the act. In 1972 Congress, in Public Law 92-480, amended 28 U.S.C. 2415 to extend this statute of limitations 5 more years, to July 18, 1977. Indians have expressed serious concern that the present statutory limitation might bar them from recovering damages in numerous causes that arose before 1966 because many of their claims may not be processed before the statute of limitations runs out. Accordingly, we recommend that the statute of limitations in 28 U.S.C. 2415 be extended until December 31, 1981, for claims brought by the United States on behalf of Indians where the cause of action arose prior to 1966.

Significantly, Congress recognized the unique nature of these suits and the peculiar difficulties in uncovering potential Indian claims and preparing them for litigation. In its report on the bill which became Public Law 92-485, the Senate Committee on Interior and Insular Affairs acknowledged the difficulty in identifying all Indian claims, and noted that the Bureau of Indian Affairs and the Office of the Solicitor had not been able to discover all the wrongs and then develop factual information necessary to get litigation filed. (1972 United States Code Congress and Administration News, p. 3593)

The 5-year extension granted in 1972 did not solve the problem. Many of these claims go back to the 18th and 19th centuries, and it is difficult to estimate the number which remain unprocessed. For example, the Field Solicitor's Office in Phoenix, Ariz., has developed approximately 35 claims in their geographical area which they will attempt to process by July 18, 1977. The Twin Cities' Field Solicitor's Office, covering Minnesota, Iowa and Wisconsin, has developed 167 cases. The Office of the Solicitor estimates that there could be many pre-1966 claims as yet unidentified or still being asserted that would have to be filed by July 18. Nationwide the unprocessed cases could amount to well over 1,000. The major reason why the 5-year extension was insufficient is that many tribes have only became aware of their tort and contract remedies in the last few years and thus have not, until recently, had adequate procedures to document claims as they arose. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977.

Due consideration should be given to the hardship which will be worked on tribes all over the country if Indian claims arising before 1966 are permanently barred from suit by 28 U.S.C. 2415. Tribes would be foreclosed from recovering damages for past unlawful uses of Indian lands. However, instead of the 10 years provided in H.R. 5023, we recommend that the statute of limitations be extended until December 31, 1981. This will provide adequate time to give these claims appropriate attention.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposed report from the standpoint of the administration.

Sincerely,

LEO KRULITZ, *Solicitor.*

DEPARTMENT OF JUSTICE,
Washington, D.C., May 25, 1977.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 5023, a bill to amend the statute of limitations provisions found in section 2415 of title 28 of the United States Code, insofar as those provisions relate to claims which might be made by the United States on behalf of an Indian or an Indian tribe.

By the act of July 18, 1966, 80 Stat. 305, Congress enacted a general statute of limitations governing claims by the United States. This statute was codified as 28 U.S.C. 2415 and 2416. Under 2415(a), Federal claims founded on a contract express or implied in law or fact would be barred unless filed within 6 years after the right of action accrued or within 1 year after the completion of any administrative proceedings required by law or contract, depending on which was the later date. Under 2415(b), tort actions generally were to be filed within 3 years after the right of action accrued but certain specified tort actions, including actions to recover damages for trespass on trust or restricted Indian lands, could be brought within 6 years of the date on which the cause of action accrued. Under section 2415(g), any cause of action accruing prior to the date of enactment (July 18, 1966) was to be deemed as accruing on that date.

Section 2415 has been amended twice and each amendment relates to suits brought by the Government on behalf of the Indians. By the act of July 18, 1972, 86 State. 499, 2415(a) was amended to provide that an action in contract on behalf of any "reorganized tribe, band or group of American Indians" would not be barred unless filed more than 6 years and 90 days after the cause of action first accrued. This provision relates to claims which have accrued, or will accrue, subsequent to July 18, 1966, and is unaffected by the current proposal. The same act amended 2415(b) so as to permit trespass actions (and other actions based on specified torts) on behalf of any tribe, band or group of Indians or relating to trust or restricted Indian lands (the beneficial

interests of which are owed by individual Indians) [1] to be brought within 6 years and 90 days of the date of accrual. This provision applies to causes of action accruing after July 18, 1966, and is unaffected by Interior's proposed amendment.

The second amendment to 2415 was accomplished by the act of October 13, 1972, 86 Stat. 803, which concerned claims on behalf of any tribe, band or group of American Indians, or on behalf of individual Indians owning trust or restricted land, which claims had accrued prior to July 18, 1966. By this amendment such claims, whether of the kind described in subsection (a) or involving specified torts—including trespass—under subsection (b), could be filed within 11 years of July 18, 1966.[2] It is these provisions which the bill seeks to amend by extending the period for another 10 years.

Since this Department litigates only those cases referred to us by the Department of the Interior, we obviously have no firsthand knowledge of the number of claims which accrued prior to 1966 but which the Interior Department has not yet been able to satisfactorily prepare for referral to this Department for litigation. However, the Department of the Interior has informed us that the number of possible claims is substantial, and we completely support, in the interests of justice, the amendment of the statute of limitations to afford the Government additional time to examine these claims and to prepare for litigation those claims found to be meritorious. But we question the need for a 10-year extension of time; we believe that with a concerted and diligent effort claims could be processed in a shorter period of time and that an amendment of the statute to December 31, 1981 would be sufficient.

The Department of Justice at one time intended to submit a bill to extend the statute of limitations for those claims which the United States may assert on behalf of the Indians of the State of Maine arising out of trespasses on their ancestral aboriginal landholdings. H.R. 5023 addresses on a broader scale the same problem and the passage by the Congress of H.R. 5023 would render unnecessary the passage of legislation specifically for the benefit of the Maine Indians.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

PATRICIA M. WALD,
Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made

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[1] While the July 18, 1972, Act does not explicitly mention individual Indians, it obviously intends to include them since most of the trust land is held by the United States for individual Indians rather than for tribes.

[2] The October 13, 1972, amendment also permits actions under subsection (a) to be filed within 2 years of any required final administrative decision, if that date is later than the 11 years after July 18, 1966. This provision would of course also be extended by the proposed amendment although it is extremely unlikely that there are now any administrative proceedings pending concerning pre-1966 claims.

by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

* * * * * * *

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

* * * * * * *

§ 2415. Time for commencing actions brought by the United States.

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgement of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgement: *Provided further*, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed [more than eleven years after the right of action accrued] *after December 31, 1981* or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in

accordance with subsection (g) may be brought [within eleven years after the right of action accrues.] *on or before December 31, 1981.*

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of an agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismisssed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.

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Mr. DANIELSON. That will conclude the hearing on this bill for today.

I hope to get into markup yet this week on it, but we have to move into another subject matter immediately.

The Chair thanks all of the witnesses for taking the time and making the effort to appear, and we will see you all again, I am sure.

That concludes this particular matter.

[Whereupon, at 2:50 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL

TESTIMONY OF HON. KEN HOLLAND

Mr. Chairman: I appear before you today to express my wholehearted support for the bill being considered by your Subcommittee, S. 2222, which would extend until December 31, 1984 the time within which the United States may bring action for damages on behalf of an Indian tribe or individual.

My interest in this legislation stems from the Catawba Indian Land Claim which is contained exclusively within the confines of the Fifth Congressional District of South Carolina which I have the honor to represent. I will not go into the history of the claim which I will enter into the record as part of my prepared statement. Let it suffice to say for the purposes of this hearing that the land claims of the Catawba Indian Tribe are based on the Tribe's vested right in a 1763 Treaty reservation containing approximately 144,000 acres, which is a 15-mile square area in the northeastern section of the State. My concern with this claim is not merely the obvious disruption to the lives of all the citizens residing in the affected area, nor the general feeling of frustration and unrest resulting from the continuing problem. Rather, it is more the economic disruption caused by a retardation of growth in the area. In the past two years, I have been besieged by constituents who have encountered difficulty with land transactions because of the existence of this claim. Title insurance companies have generally refused to underwrite financing in such areas as commercial shopping center development, low income housing, and homes for the aged. In addition, this area which is among the fastest growing areas in the southeastern United States has been deprived of economic growth because of the refusal of various segments of our national economy to locate upon lands over which there might be some outstanding dispute as to title rights.

Various actions have been taken in an effort to settle this claim, and I have been involved personally in these efforts since my election to Congress in 1974. In the First Session of the 96th Congress I introduced legislation with the cosponsorship of the entire South Carolina House delegation to express the concern of expediting action on the matter prior to the April 1, 1980 deadline, and to provide a vehicle upon which a just and complete solution might be fashioned in a legislative manner. As the April 1 deadline drew nearer, the Catawba Tribe made clear that they would pursue action in the courts via a lawsuit claiming the 144,000 disputed acres if it became apparent that the problem would not be settled by the deadline. In a letter from the Office of Management and Budget dated December 12, 1979 which I will also include for the record, the Administration formally stated their position on an appropriate dollar level contribution by the Federal Government as $7 million, with additional State contributions warranted to supplement this figure in any final settlement. Efforts to realize such a State contribution are proceeding.

It appears to me that it is possible that the Catawba Indian Land Claim can be settled in a responsible manner that is fair to all parties involved—the Tribe, local landowners, the State, and Federal taxpayers. However, in order for this to occur it is imperative at this time that an extension of the time frame imposed by the designated April 1, 1980 date be granted as is provided in the legislation under consideration today. This extension is the only action which would prevent the filing of a lawsuit by the Catawba Tribe from occurring. If this Subcommittee does not act, this matter has no other recourse than to the courts, and the constituents I represent have no recourse from the certain and continuing and long-range economic consequences that that slow judicial proceeding will cause.

Mr. Chairman, I therefore wholeheartedly support S. 2222, and urge your Subcommittee to act promptly and favorably on the measure.

BACKGROUND ON H.R. 3274, THE CATAWBA SETTLEMENT ACT

The purpose of H.R. 3274, the Catawba Settlement Act, is to provide for a settlement and for the implementation of a settlement between the Catawba

Indian Tribe of South Carolina, the State of South Carolina, and certain private landowners in York and Lancaster Counties of South Carolina with respect to the tribe's claim for possession of certain lands within the State.

The land claims of the Catawba Indian Tribe are based on the Tribe's vested right in a 1763 Treaty reservation containing approximately 140,000 acres of land (a 15 mile square) in the northeastern section of South Carolina.

Prior to the 1763 Treaty, the tribe occupied and had aboriginal title to a much larger area. In 1763, the tribe relinquished their claim to the larger area in return for Great Britain's assurance that the tribe's possession of the 15 mile square would remain secure. After the Revolutionary War, the United States, as the new sovereign, assumed the obligation of the 1763 Catawba Treaty.

By 1840, the Catawba Indian reservation had been largely overrun by non-Indian settlers in spite of the continuous protestations of the tribe and the tribe was forced into the making of another treaty. In this treaty, the tribe conveyed its remaining title and interest in the 144,000 acres to the State of South Carolina.

The Federal Government was not involved in the negotiation of the 1840 treaty and never consented to the provisions of the treaty. Under the Trade and Intercourse Act of 1790, as amended and supplemented (25 U.S.C. 177), State treaties and transactions for land with Indian tribes without Congressional ratification are null and void. The 1840 South Carolina treaty was never ratified are null and void. The 1840 South Carolina treaty was never ratified by the United States. Accordingly, the tribe now claims vested title to the reservation based on the 1763 treaty.

Since 1904, the Catawba Indian Tribe has made repeated attempts to obtain federal assistance in asserting its claim for title to the land. In August of 1977, the Secretary of the Interior made the announcement that the Department of the Interior had asked the Department of Justice to begin legal action on behalf of the Catawba Indian Tribe for recovery of the 140,000 acre reservation. The Secretary also made it clear that the Administration would favor a negotiated settlement implemented by Congressional action over possible lengthy and disruptive litigation, which could cloud private landowner's title and cause economic disruption and hardship in the communities affected by the claim. A Task Force of Administration representatives was appointed in April of 1978 for the purpose of seeking a possible settlement agreement among the parties.

The legislation before the Committee provides for the release by the United States, on behalf of the Catawba Indian Tribe, of any right it may have to the lands in question in return for full compensation to the tribe for such relinquishment of title. It also directs the Secretary to develop within three months of enactment a plan, to be approved by the tribe, for the use of the settlement funds. The legislation also provides that there be a State contribution to the Settlement Fund.[1]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., December 12, 1980.

HON. KENNETH L. HOLLAND,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HOLLAND: In a recent conversation with OMB staff, you asked that we provide the Administration's position on the appropriate dollar level for settling the Catawba Indian land claim involving 144,000 acres in the Rock Hill area of your district.

As you know, Leo Krulitz, then Solicitor of the Interior Department, testified last June before the House Committee on Interior and Insular Affairs concerning the bill you introduced to settle the Catawba claim. Mr. Krulitz at that time indicated that $7 million would be the maximum Federal contribution to any Catawba settlement. The Administration continues to endorse this amount as fair and equitable based on (1) the size and credibility of the claim and (2) other related Indian claim settlements.

The Administration notes a recent meeting between Catawba tribal attorneys and Interior officials during which one of the tribal attorneys stated that the claim could not be settled for less than an amount necessary to provide per-capita

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[1] Above information obtained from the Committee Report on Hearing before the Committee on Interior and Insular Affairs on H.R. 3274, to settle the Nonintercourse claims of the Catawba Indian Tribe of South Carolina, held June 12, 1979; Serial Number 96-17.

payments of $12,000. These per-capita payments would amount to a Federal contribution of at least $14 million. We believe this level of per-capita funding is completely unjustifiable, being significantly higher than the maximum per-capita judgments awarded Western Indians after lengthy, complex litigation. In short, we will not endorse this type of claim settlement under any circumstances.

Finally, as in other settlements involving Eastern Indian land claims, we look to the State Government for an appropriate contribution to any final settlement, bearing in mind that this issue primarily affects citizens wihin the State and the fact that it was South Carolina which initially received the land in question from the Tribe in alleged violation of the 1790 Non-Intercourse Act. Efforts to realize such a State contribution are proceeding.

I trust this information clarifies the Administration's position in the Catawba claim settlement where we are attempting, as elsewhere, to reach a responsible agreement that is fair to all parties involved—the Tribe, local landowners, the State, and Federal taxpayers.

Sincerely,

CURTIS A. HESSLER,
Associate Director.

PREPARED STATEMENT OF REPRESENTATIVE GARY A. LEE

Mr. Chairman, members of the committee, I apologize for not being able to appear before you personally today, however illness prevents my attendance.

Mr. Chairman, I oppose the House enactment of S. 2222, an extension of the statute of limitations deadline before which Indian tribes may seek damages in contract and tort claims. I believe that Congress has already provided more than enough time for such actions.

I am currently involved with a highly complex and controversial claim within my own 33rd Congressional District of New York State. Many of the steps taken in this matter were taken specifically with the existing April 1, 1980 statute deadline in sight. I assure you that these have been difficult, indeed. Yet I do not believe that the extension of time, again, for this kind of claim to be brought before this government is the answer.

Before 1966, no statute was in existence, Congress established the limitation specifically in order to put a final end to the anguish of countless thousands of residents of land which was once in Indian possession. Congress acted to decide these matters once and for all. Yet, over these past 14 years and again today, we find serious consideration for legislation that would prolong the indecision. I oppose this strongly.

The Department of Interior and its Bureau of Indian Affairs has continually indicated that they needed "just a little more time" to extinguish the claims in processing. Yet with the approach of every deadline, the Department's logs bloat with more claims. Rather than reduce their number, the unhandled case count is today more than 9,500.

What this Congress may not realize is that these numbers reflect communities, families and individual homeowners whose properties are placed in jeopardy, whose titles to the land they paid for are suddenly no longer sacrosanct, whose abilities to sell their land for a fair price are vanished under the cloud of Indian claims.

Mr. Chairman, I think it is time that the Congress realize that it must take a position in this matter. It has delayed time and time again, until today estimates of the American land under threat of Indian claim is as high as phenomenal 80 percent. Every parcel, every tract and every claim represents property that American families have purchased and built their lives around. The cloud of potential claims must be dissipated. Congress today has the opportunity to start that process by making the existing deadline final. No less than the then-Attorney General of the United States, Griffin Bell, expressed that same sentiment in recognition of the emotional and financial hardships placed on families within claims areas. The Department of Interior must not be allowed to carry their crusade out indefinitely.

I do not seek to deny any Indian tribe what is due to it through the reasonable application of American law. But I also do not wish to prolong the personal fears and problems of those whose property may be in jeopardy. Let us now put a lid on the matter. After 20 years, no one in their right mind could accuse Congress of acting with haste. We must deny House approval of S. 2222.

Thank you for this opportunity.

96TH CONGRESS
2D SESSION

S. 2222

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 1980

Referred to the Committee on the Judiciary

AN ACT

To extend the time for commencing actions on behalf of an Indian tribe, band, or group, or on behalf of an individual Indian whose land is held in trust or restricted status.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the third proviso in section 2415(a) of title 28, United States Code, is amended by striking out "after April 1, 1980" and inserting in lieu thereof "after December 31, 1984".

(b) The proviso in section 2415(b) of title 28, United States Code, is amended by striking out "on or before April

1, 1980" and inserting in lieu thereof "on or before December 31, 1984".

SEC. 2. The amendments made by the first section of this Act shall be applicable only with respect to those Indian claims identified, on or before December 31, 1981, by the Secretary of the Interior as an Indian claim or potential claim and published in the Federal Register in accordance with this section.

Passed the Senate February 20 (legislative day, January 3), 1980.

Attest: J. S. KIMMITT,
Secretary.

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